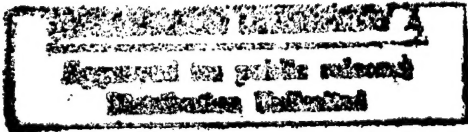



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CONFLICT RESOLUTION: THE RELATIONSHIP BETWEEN AIR FORCE
PUBLIC AFFAIRS AND LEGAL FUNCTIONS

By

JAMES WILLIAM LAW

A THESIS PRESENTED TO THE GRADUATE SCHOOL
OF THE UNIVERSITY OF FLORIDA IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS IN MASS COMMUNICATION

UNIVERSITY OF FLORIDA

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This research is dedicated to Virginia Pribyla—the most professional public affairs officer and military member I know. Her ideas, feedback, encouragement and support made this study possible.

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Abstract of Thesis Presented to the Graduate School
of the University of Florida in Partial Fulfillment of the
Requirements for the Degree of Master of Arts in Mass Communication

CONFLICT RESOLUTION: THE RELATIONSHIP BETWEEN AIR FORCE
PUBLIC AFFAIRS AND LEGAL FUNCTIONS

By

James William Law

May 1998

Chair: Linda Hon

Major Department: College of Journalism and Communications

The literature regarding the relationship between public relations practitioners and lawyers indicates that a balance between the two is the best way for an organization to survive or prevent a crisis. However, legal counsel is taken more often over public relations counsel, which can be fatal in the court of public opinion. Researchers suggest that interdisciplinary education and better communication and planning between lawyers and communicators will create a better balance between the two functions.

This research examines the relationship between Air Force public affairs and legal functions to find out what conflict exists, how often it occurs, how it is resolved, what the results are for the Air Force as a whole, and what can be done to improve the relationship. The study is based on conflict resolution theory and examines the relationship in terms of win-win, win-lose and lose-lose scenarios. An on-line survey was conducted of 790 Air Force public affairs officers, lawyers and commanders using

electronic mail and a web-based form. The researcher received approximately 250 responses (31%).

The data indicate that, while Air Force lawyers and communicators usually work well together, conflicts between the two do occur for a variety of reasons: differing objectives; the balance between the “right of the people to know” and the government’s or an individual’s right to privacy and fair legal proceedings; an information-hungry media environment; defense attorneys who use the media to plead their case, government rules which muzzle the Air Force from telling its side of a story; and a lack of education and/or training of public affairs officers and judge advocates. Respondents indicated that conflicts between the two are usually resolved in a win-win result for the two parties approximately half of the time, and that the legal course of action is taken much more often than the public affairs course of action. The data further show that the Air Force as a whole only experiences a win-win result approximately 30% of the time following a conflict between public affairs and legal functions, indicating that leaders may need to give greater heed to public affairs counsel if they want the service to be successful in both the court of public opinion and courts of law.

Based on his analysis of the data, the researcher recommends continued interdisciplinary education of public affairs officers, judge advocates, and commanders regarding balancing legal and public affairs issues; more joint planning between the two functions; more communicating and sharing of information; clarification of the rules regarding the release of information during courts martial, investigations and other high-visibility legal crises; and more emphasis on what is in the best interest of the Air Force.

CHAPTER 1 INTRODUCTION

There is growing concern among U.S. Air Force communicators and lawyers regarding the relationship between the two disciplines, especially during crisis situations. The Air Force's former Director of Public Affairs has described the alliance between the two as "a complex relationship between two member of the same team,"¹ and another senior Air Force public affairs officer admits that "whether at Air Force headquarters or in the field, we often experience a conflict of perspectives when lawyers and public affairs officers advise senior leaders during crises."² Recognizing this, the researcher examined the relationship between Air Force legal and public affairs functions by gathering data to determine what conflict exists, how often it occurs, how it is usually resolved, its overall effects on the Air Force, and how the relationship between the two functions can be improved.

Examining this relationship is important because there is evidence to suggest that the actual number of crises faced by organizations is rising. A study conducted by the Institute for Crisis Management showed that the first six months of 1996 saw a 13%

¹ Sconyers, Ronald, U.S. Air Force Director of Public Affairs, Memorandum to The Air Force Judge Advocate General, 22 Oct. 1997.

² Tyrell, Terry, Chief of Strategic Planning, Secretary of the Air Force Office of Public Affairs, personal email, 11 Apr. 1997.

increase in the number of business crises.³ Although white-collar crime, corporate mismanagement and labor disputes made up nearly half of the crises studied by the Institute, sexual harassment was the fastest growing crisis category, jumping 192% during the same time period.

One researcher attributes the jump in the number of crises to increased interest from the mass media and to an increase in the number of lawsuits filed against companies, factors which are naturally of great concern to both lawyers and communicators.⁴ And in today's environment, says one crisis communication scholar, "So many crises are created by lawsuits there is a growing need for lawyers and PR folks to work together."⁵

Another reason why the relationship between lawyers and public relations practitioners is so important during a crisis is the time factor. Executives are under tremendous pressure at the onset of a crisis and what little time there is "shouldn't be wasted in bickering between lawyers and public relations people."⁶ From an Air Force perspective, crises can impact commanders' options, service members' reputations, and

³ "Crises Up Slightly in First Half of '96," Inside PR, 12 Aug. 1996 (<http://www.register.com/prcentral/ipraug12crisis.htm>)

⁴ Pinsdorf, Marion, Communicating When Your Company Is Under Siege: Surviving Public Crisis, (Lexington, MA: Lexington Books, 1987) 6, 7.

⁵ Fitzpatrick, Kathy, personal email, 30 Apr. 1997.

⁶ Birch, John, "New Factors in Crisis Planning and Response," Public Relations Quarterly, Spring 1994: 33.

most importantly, Air Force policy formulation.⁷ A senior Air Force lawyer who regularly briefs officers regarding the military justice system perceives that commanders are distressed to see distortions in the media and their "possible impact on their ability to handle a case according to their best judgment."⁸

There is already a body of knowledge on the relationship between corporate lawyers and public relations people. The research shows the two sides frequently can offer "competing and adversarial approaches to problem solving" and "have a paralyzing effect on the decision-making process," forcing leaders to balance the two perspectives.⁹ This could be because, as one senior Air Force lawyer said, the legal focus normally has been on inside-the-courtroom issues and "media relations has been traditionally left to Public Affairs."¹⁰ But on the other hand, many scholars and practitioners believe that if properly used, the two consultants can play significant roles in helping an organization survive or even prevent a crisis.¹¹

Research on this topic has been done mostly by communicators using data gathered from other communicators. However, the researcher gathered data from not

⁷ Swanson, Jim, "JA/PA Relations and the Media," briefing at the Air Education and Training Command Public Affairs Conference, Feb. 1997.

⁸ Rives, Jack, Air Force Judge Advocate General School commandant, personal telephone conversation, 14 Jul. 1997.

⁹ Cooper, Douglas, "CEO Must Weigh Legal and Public Relations Approaches," Public Relations Journal, Jan. 1992, 40.

¹⁰ Swanson.

¹¹ Cooper, 40.

only public affairs personnel, but also from legal practitioners and from Air Force decision makers—the commanders. Because researchers have neglected examining this relationship from the perspective of these other professionals, this research will fill a void in the literature on the subject.

Additionally, nearly all of the research regarding this relationship has been done from the corporate or business viewpoint, which has left a gap in research regarding those in government and, in particular, military service. Still, a few similarities can be drawn between the two types of organizations. With more than 500,000 employees, an annual \$75 billion budget and more than 75 worldwide installations, the United States Air Force is comparable to a large international company.¹² And like any large company, the Air Force is faced with crises from time to time and will continue to be vulnerable to crises and related negative effects. The Air Force is also similar to civilian companies which, when facing crises, are “turning to two consultants: lawyers and those engaged in public relations.”¹³

Nevertheless, the military faces three additional factors that might exacerbate any existing strain between the two fields. First, the Department of Defense consistently draws a very large amount of attention from Congress, the news media, special interest groups, the states and communities where installations are based, and the millions who have family members and friends who serve. One Air Force lawyer who has noticed the

¹² “U.S. Air Force Almanac 1997,” Tamar Mehuron, ed., Air Force Magazine, May 1997, 42-139.

¹³ Cooper, 40.

increased media coverage of Air Force courts martial and other disciplinary actions attributes it to an increase in the number of "victims" seeking media attention on their behalf, the growing use of the media by defense attorneys and the proliferation of and competition among the media themselves.¹⁴ And recently, the media have been more rigorous in getting information, often from other-than-official sources, says another Air Force lawyer, making it even more essential that communicators and lawyers work closely together to minimize distortions in the media.¹⁵

Second, in addition to being under the jurisdiction of state and federal law, all military members have other legal responsibilities under the Uniform Code of Military Justice and military regulations, which can create challenges that corporate practitioners may never face. For example, although company executives may lose their jobs or face civil litigation from spouses following adulterous affairs with coworkers, recent high-visibility cases have shown that service members can be criminally prosecuted and put in jail for similar transgressions. Although "adultery is almost never prosecuted unless other serious offense are also alleged,"¹⁶ the Air Force has prosecuted nine people for adultery alone since 1985.¹⁷

¹⁴ Swanson.

¹⁵ Rives, personal telephone conversation.

¹⁶ Rives, Jack, "It Works for Us: A Guide to the Military's Rules On Fraternization and Adultery," (<http://www.palink.af.mil/home/fratpax.html>) 11 Dec. 1997.

¹⁷ Nobel, Carmen, "The Kelly Flinn Case: Pilot's Discharge Won't End The Debate Over Crimes Of The Heart," Air Force Times, 2 Jun. 1997.

Third, military spokespersons are obligated by law to release information unless it is classified or otherwise exempt under the Freedom of Information Act. So although choosing not to release information may be a viable option for corporate public relations practitioners, government communicators operate under a different set of rules.

The combination of these three factors—intense media attention, the UCMJ, and the obligation to release information—can make for some unique legal-public relations situations. Research into the relationship between these two fields in the military will add to the body of knowledge that already exists regarding the relationship in corporate and business service.

CHAPTER 2 REVIEW OF LITERATURE

Definition of Terms

There has been much discussion in the literature regarding the definition of “conflict,” but for purposes of this paper, a conflict exists “whenever incompatible activities occur.”¹ Two military terms also need clarification. The military calls its public relations function *public affairs*. Although there are a few differences between what a corporate public relations person does and what an Air Force public affairs person does, the functions of media relations, community relations and internal relations are largely the same, so the two terms will be used interchangeably. Similarly, the Air Force calls its legal officers *judge advocates*, which will be used interchangeably with “lawyers” and “attorneys.”

Conflict Theory—An Overview

Conflict and the Causes of Conflict

Morton Deutsch, a sociologist who has studied conflict for more than 25 years, has written, “Conflict can neither be eliminated nor even suppressed for long.”² His

¹ Deutsch, Morton, The Resolution of Conflict, (New Haven: Yale University Press, 1973) 10.

² Deutsch, 10.

statement that conflict occurs “whenever incompatible activities occur” is not limited to only competitive situations but also extends to cooperative situations as well since “controversy over the means to achieve a mutually desired objective is a common part of cooperation.”³ He believes that conflict in and of itself is neither good nor bad, but that conflicts can be resolved with either constructive or destructive consequences to the participants: “A conflict clearly has destructive consequences if its participants are dissatisfied with the outcomes and feel they have lost as a result of the conflict ... a conflict has productive consequences if the participants all are satisfied with their outcomes and feel that they have gained as a result of the conflict.”⁴

Accordingly, Deutsch lists seven variables that can affect the course of conflict and that can determine whether a conflict is resolved productively: the characteristics of the parties in conflict, their prior relationship to one another, the nature of the issue giving rise to the conflict, the social environment within which the conflict occurs, the interested audiences to the conflict, the strategy and tactics employed by the parties in the conflict, and the consequences of the conflict to each of the participants and to other interested parties.⁵

Conflict Resolution

If, as Deutsch says, conflict between parties is inevitable from time to time, the goal of conflict resolution is not necessarily how to eliminate or prevent conflict but

³ Deutsch, 10, 31.

⁴ Deutsch, 17.

⁵ Deutsch, 4-6.

rather “how to make it productive.”⁶ Conflict can be resolved in a variety of ways. One of the simplest ways to analyze conflict resolution is detailed by Alan Filley. He lists three methods: forcing (win-lose), compromising (lose-lose), and problem solving (win-win).⁷

As the labels in parentheses suggest, win-lose and lose-lose methods mean that at least one party of the conflict has failed to achieve objectives, thereby causing what Deutsch would call destructive consequences. Both of these methods also have in common that:

- There is a clear we-they distinction between the parties rather than a we-versus-the-problem orientation.
- Energies are directed toward the other party in an atmosphere of total victory or total defeat.
- Each party sees the issue only from his/her own point of view, rather than defining the problem in terms of mutual needs.
- Their emphasis in the process is upon attainment of a solution, rather than upon a definition of goals, values, or motives to be attained with the solution.
- Conflicts are personalized rather than depersonalized via an objective focus on facts and issues.
- There is no differentiation of conflict-resolving activities from other group processes, nor is there a planned sequence of those activities.
- The parties are conflict-oriented, emphasizing the immediate disagreement, rather than relationship-oriented, emphasizing the long-term effect of their differences and how they are resolved.⁸

⁶ Deutsch, 17.

⁷ Filley, Alan, Interpersonal Conflict Resolution, (Dallas: Scott, Foresman and Company, 1975): 21.

⁸ Filley, 25.

Forcing methods are further characterized by “real or perceived power imbalances between the parties” where each tries to control such things as information, money and authority, resulting in one party giving in to the other or a deadlock.⁹ Compromising methods differ from forcing in the assumption by both parties that there is an equal balance of power between them and that continued disagreement is more costly than compromise. Even so, each party still tries to increase its power, and information is still hoarded or manipulated to gain an advantage. The result of compromising methods is that, while both parties agree to a particular decision, neither is really satisfied with it.¹⁰

On the other hand, problem-solving methods use consensus strategies and focus on the end goal, thereby causing what Deutsch would call productive consequences. As a win-win method, the only thing lost by engaging in problem-solving, says Filley, is “the creation of losers.”¹¹ Problem-solving is characterized by a belief that it is possible to “arrive at a solution which is of high quality and which is mutually acceptable.”¹² Information is fully shared and all alternatives are evaluated before a decision is made, and the outcome of this win-win method is usually a decision to which both parties are committed.

⁹ Filley, 90.

¹⁰ Filley, 91.

¹¹ Filley, 22.

¹² Filley, 92.

Unfortunately, says Filley, forcing and compromising are the most practiced methods of conflict resolution, perhaps "because of the tendency many of us have to persist in using learned behavior patterns, even those which are destructive."¹³ The decision by a party to use a particular method is based on each party's belief of the possibility of an agreement, the possibility of finding a win-win solution, and the ultimate consequences.¹⁴

Accordingly, Filley has discussed various organizational options to increase the likelihood that problem-solving will be the method of choice when resolving conflicts. His options include: parties meeting together to develop joint agendas of problems to be solved, the allowing of open disagreement on both sides in each other's presence, and meeting to discuss attitudes, feelings and previous behavior.¹⁵ These organizational options are similar to the steps in one particular type of problem solving that Filley calls "integrative decision making." This process includes the review and adjustment of the conditions that promote cooperation versus conflict; the review and adjustment of perceptions, feelings and attitudes between parties; mutual determination of the problem; nonjudgmental generation of potential solutions; the evaluation of the solutions; and agreement on the final decision.¹⁶

¹³ Filley, 22.

¹⁴ Filley, 56, 57.

¹⁵ Filley, 76-79.

¹⁶ Filley, 92, 93.

Public Relations vs. Legal Counsel

Using conflict theory to examine the relationship between public relations and legal counsel is appropriate, because although both staff functions are usually on the same team, whether that team is the Air Force or a company, each represents different and sometimes conflicting objectives. Such conflicts can reflect the two arenas in which they operate—"courts of law proclaim that a person is innocent until proven guilty, whereas the court of public opinion often declares a person guilty until proven innocent."¹⁷ A negative ruling in either can be devastating—in a court of law, one can be imprisoned or lose large sums of money, and in the court of public opinion, "you lose your reputation, your good name and your positive image."¹⁸ Conflicts between the two also may be a result of perceived or real incompatibilities with the laws or rules which govern each field. For example, although military personnel are bound by the Freedom of Information Act and other regulatory instructions to provide full disclosure of information to the public with minimum delay,¹⁹ they also are restricted by law from releasing some types of personal information about Air Force employees under The Privacy Act of 1974 and other regulations. And, the Air Force's Rules of Professional conduct, which are based on the American Bar Association's Standards for Criminal Justice, prohibit personnel from making statements that "have a substantial likelihood of

¹⁷ Fearn-Banks, Kathleen, Crisis Communications: a casebook approach (Mahwah, N.J.: Lawrence Erlbaum Associates, 1996) 98.

¹⁸ Fearn-Banks, 97.

¹⁹ Air Force Instruction 35-206, Media Relations, 29 Jun 1994 at 1.3.2.

materially prejudicing an adjudicative proceeding.”²⁰ At the core of such conflict is one experienced by military and civilian lawyers and communicators alike—the balance between the public’s right to know and an organization’s or a person’s right to privacy and the right to fair legal proceedings.

Lawyers and the Court of Law

There is disagreement over whether there has been a “litigation explosion” in the United States. One author estimates that civil litigation “is increasing approximately seven times faster than the national population”²¹ and another estimates that up to 30 million cases are filed each year.²² Yet the national Center for State Courts reported in 1996 that there is no evidence that the number of civil lawsuits is on the rise and that the number has actually been decreasing since 1990.²³ Regardless of the actual number of cases filed, they cost corporate America more than \$80 billion a year.²⁴ Because corporate lawyers want to prevent litigation from occurring and desire to win should a

²⁰ Air Force Rules of Professional Conduct at 3.6, Trial Publicity.

²¹ Garry, Patrick, A Nation of Adversaries: How the Litigation Explosion Is Reshaping America, (New York: Plenum Press, 1997) 15.

²² Jacobs, Margaret, “Reliable Data about Lawsuits Are Very Scarce,” Wall Street Journal, Jun. 9, 1995, 1 as cited in Garry.

²³ Dilworth, Donald, “Court Statistics Confirm No Litigation Explosion,” Trial, May 1996, 19.

²⁴ Quayle, J. Danforth, speech delivered to the American Bar Association convention in Atlanta, Ga. (Aug. 1991), reprinted in Earlhamite, Spring 1992, at 6 as cited in Roschwalb, Susanne and Stack, Richard, “Litigation Public Relations,” Communication and the Law, Dec. 1992: 5.

lawsuit be filed against their company, they naturally want to control any information which could affect such litigation. Since anything spoken or written can potentially be used against a client in court, and since anyone with knowledge of an organization can be called into court for depositions against a client,²⁵ “the last thing that an attorney wants to do is to lose control of the words....”²⁶ And although some public relations practitioners argue that “wordsmithing is time-consuming and pointless,”²⁷ it is for this reason that some lawyers instinctively “encourage the CEO to head for the bunker and slam the door, saying and admitting nothing.”²⁸ One lawyer who is concerned about the balance between public relations and legal issues during crises states:

One of a lawyer’s primary concerns in a crisis is ensuring that the client doesn’t make statements that will prove detrimental or fatal in a later legal proceeding. Be assured that all public statements—written or oral—made by a company and its representative during a crisis will be scrutinized by lawyers preparing a later lawsuit against the company. Any statements even slightly suggestive of an admission of liability will turn up in post-crisis litigation.²⁹

²⁵ Fearn-Banks, 97.

²⁶ Cooper, Douglas, “CEO Must Weigh Legal and Public Relations Approaches,” Public Relations Journal, Jan. 1992: 39.

²⁷ Sylvester, Carla, “PA Lessons: High Visibility Court-Martial” briefing at the Air Education and Training Command Public Affairs Conference, Feb. 1997.

²⁸ Birch, 31.

²⁹ Magid, Creighton, “Balancing PR and Legal Needs in a Crisis,” Reputation Management, Nov/Dec 1995, (<http://www.prcentral.com/rms095magid.htm>).

Therefore, it is not surprising that some lawyers focus on winning the legal battle and believe that "if the case is won, it does not matter what the public thinks."³⁰ One author sums up a description of this *traditional legal communication strategy*: say nothing; say as little as possible and release it as quietly as possible; "say as little possible, citing privacy law, company policy or sensitivity; deny guilt and/or act indignant that such charges could possibly have been made; and shift or, if necessary, share the blame with the plaintiff."³¹

Public Relations and the Court of Public Opinion

In its crisis communication manual, General Motors says that "there are few assets on GM's balance sheet worth more than its reputation. A damaged reputation that is left untended can lead to a loss of organizational self-esteem and erosion of long-standing external relationships."³² On a similar note, the Air Force's former top military officer, General Ronald Fogleman, said that "we must consider our corporate image as a priceless resource as valuable as our people and aircraft."³³ During the past 10 years, the military has remained one of the institutions in which Americans have the most

³⁰ Cooper, 39.

³¹ James Lukaszewski, "Reducing the Media's Power," Executive Action, Apr-Jun 1993 as cited in Fitzpatrick, Kathy and Rubin, Maureen, "Public Relations vs. Legal Strategies in Organization Crisis Decisions," Public Relations Review, Spring 1995: 22.

³² General Motors Corporation Crisis Communication Manual, 1991: 6.

³³ Sconyers, Ronald, U.S. Air Force Director of Public Affairs, Global Communication Into the 21st Century, briefing to new Air Force general officers, May 1997.

confidence, according to annual Harris Polls.³⁴ The 1997 poll netted the armed services the top spot with 37% of respondents indicating they had “a great deal of confidence” in the military, with the medical community and the U.S. Supreme Court garnering second and third place with 29% and 28%, respectively. Even so, just a year earlier the same rating for the military was at 47%, a full ten points higher. Some, including Harris officials, have attributed this loss of confidence to the string of recent military sex scandals and other embarrassing incidents.

One author agrees with the emphasis on reputation, saying, “The notion of damage to corporate reputation is not just ephemeral, but actually a tangible item....”³⁵ An example of just how tangible a reputation can be to a company’s bottom line is the crisis at Texaco which occurred after *The New York Times* printed transcripts of a meeting where company executives made racially offensive comments and discussed withholding evidence from a current lawsuit claiming racial discrimination. The financial fallout from the damage to its reputation—the value of its stock, the scrutiny of government regulators, the boycott and defection of customers, and more—will “dwarf” the millions Texaco will pay to settle the lawsuit that initiated the crisis in the first place.³⁶

³⁴ “A Falling Star,” Air Force Times, 9 June 1997.

³⁵ DeMartino, Tony, “How To Do Litigation Public Relations,” Inside PR, 17 Feb. 1997 (<http://www.prcentral.com/iprfeb10litigation.htm>).

³⁶ Collingwood, Harris, “Message Therapy,” Working Woman, February 1997: 26.

Gerald Meyers, a business professor at Carnegie Mellon University who teaches a crisis response curriculum, believes that public relations deserves equal footing with lawyers during crises. "If you win public opinion," he says, "the company can move forward and get through it. If you lose there, it won't make any difference what happens in a court of law."³⁷ Kathy Fitzpatrick, a public relations practitioner and lawyer, agrees saying, "Once a company's reputation is destroyed, it may not matter if any lawsuits are filed."³⁸ She describes the *traditional public relations* way of responding to accusations and rebuilding credibility as a five step process: state company policy on the issue, investigate the allegations, be candid, voluntarily admit that a problem exists, if true, and announce/implement corrective measures as fast as possible.³⁹

Veteran public relations people know that those who "demonstrate the ability to communicate early, lead the public debate and establish themselves as a credible source have the best opportunity to win in the court of public opinion."⁴⁰ Certain public relations techniques also can help an organization win in a court of law. One litigation public relations counselor has developed a communication process for mitigating legal, media relations and political consequences following a damaging situation:

³⁷ Magid.

³⁸ Fitzpatrick, Kathy, "Ten Guidelines for Reducing Legal Risks in Crisis Management," Public Relations Quarterly, Summer 1995: 33.

³⁹ Fitzpatrick, Kathy and Rubin, Maureen, "Public Relations vs. Legal Strategies in Organizational Crisis Decisions," Public Relations Review, Spring 1995, 22.

⁴⁰ DeMartino.

- Admit a problem exists and state that something will be done to fix it.
- Explain why the problem occurred and the known reasons for it.
- Commit to regularly report additional information.
- Declare the organization's specific steps to address the issues.
- State "regret, empathy, sympathy or even embarrassment" by taking responsibility, if appropriate, for having allowed the situation to occur.
- Ask the government, the community, and opponents for help.
- Publicly set or reset goals at zero—"zero errors, zero defects, zero dumb decisions, zero problems."
- Find a way to make restitution quickly because situations remedied quickly cost a lot less and are controversial for much shorter periods of time.⁴¹

Balancing Legal and Public Relations Communication Strategies

A strictly legal communication strategy can have a very negative effect on the public's perception of an organization in crisis. An overly cautious attorney can "thwart efforts at communicating a company's message by precluding all but the most banal public comments and eviscerating carefully crafted news releases."⁴² And although it is true that what people say can be used against them in a court of law, "anything you do not say can be used against you in the court of public opinion."⁴³ This is especially important in crises which involve loss of life. One crisis communication expert writes:

⁴¹ James Lukaszewski, "Managing Litigation Visibility: How To Avoid Lousy Trial Publicity," Public Relations Quarterly, Spring 1995: 23.

⁴² Magid.

⁴³ Fearn-Banks, 97.

“Show concern for the families. Treat survivors compassionately. Provide them with as much information as possible. Keep them informed about the investigation of the incident ... Don’t let possible legal liabilities interfere with presenting a human face.”⁴⁴

From a media relations view, refusing to tell one’s own side of the story can be suicidal to an organization. “Journalists abhor a void,” says a senior vice president at Fleishman-Hillard, a leading public relations firm, “and will fill it with or without your cooperation.”⁴⁵ What is worse is that the media will often find an organization’s opponent to be more cooperative. As one author put it, “Never doubt the resourcefulness of your adversaries, nor the willingness of the public to believe the worst of the best companies.”⁴⁶ An Air Force lawyer with a background in mass communication agrees, saying that the Air Force “can’t afford NOT to play—the ‘other side’ will whether or not we do.”⁴⁷ And although the Air Force traditionally does not try cases in the media, another Air Force lawyer recognizes that “we can’t routinely let incorrect statements stand in the media.”⁴⁸

⁴⁴ Marion Pinsdorf, “Crashes Bare Values Affecting Response Success,” Public Relations Journal, July 1991: 33.

⁴⁵ DeMartino.

⁴⁶ Pinsdorf, Communicating When Your Company Is Under Siege: Surviving Public Crisis, 4.

⁴⁷ Swanson, James, Air Education and Training Command Staff Judge Advocate, personal email, 15 Aug. 1997

⁴⁸ Rives, Jack, Air Force Judge Advocate General School commandant, personal telephone conversation, 14 Jul. 1997.

Bolstering these opinions are data from two studies. A recent Opinion Research Corporation study showed that "58% of the public believe that a large company is guilty when its spokesperson responds with 'no comment' to charges of wrongdoing."⁴⁹ A 1993 national survey to measure public perception of corporate crises pushed the number up to 65% who said that "when a company spokesperson declines to comment, it almost always means that the company is guilty of wrongdoing."⁵⁰ Such reaction from the American public is natural. As one author put it, "The public believes that an innocent man can answer a policeman's questions without having a lawyer present. After all, what does he have to hide?"⁵¹ It is for this reason that most public relations people advocate a strategy that says, "You may not be able to say much, but you can say something. If all the facts aren't there, get out and say so."⁵² And some attorneys also believe that "'no comment' is the least appropriate and least productive response ... it adds absolutely nothing and leaves the public with a negative impression."⁵³ Similarly, although the Air Force will often decline to discuss certain types of information, it instructs spokespersons not to use "no comment" because "you will sound and look guilty."⁵⁴

⁴⁹ DeMartino.

⁵⁰ Maynard, Roberta, "Handling a Crisis Effectively," Nation's Business, Dec. 1993: 54.

⁵¹ Fearn-Banks, 97.

⁵² Warner, Hal, as cited in Maynard, 54.

⁵³ Shapiro, Robert, "Using the Media to Your Advantage," The Champion, Jan./Feb. 1993, 8.

⁵⁴ Air Force Instruction 35-206 at 2.17.

An example of a company who failed to "get out and say so" is Dow Corning, which has lost millions in settling claims over its silicone breast implants and which has been criticized for not releasing factual information soon enough.⁵⁵ Another example of a company that has come under fire for withholding information is Rockwell International, the major contractor for the space shuttle. Following the 1986 Challenger explosion, the company instituted a nearly complete news blackout, even refusing to release basic facts about the shuttle program.⁵⁶

One example of a company which lost in the legal courts partly because it lost in the court of public opinion is Denny's. Even after more than 4,300 individual claims of racial discrimination in its restaurants, Denny's public statement said, "Our company does not tolerate discrimination of any kind. Any time evidence of such behavior is brought to our attention, we investigate and appropriate disciplinary action is taken."⁵⁷ This denial, in the face of evidence or perception of the opposite, contributed to the \$43.7 million Denny's forked out to settle the class-action suit.⁵⁸

⁵⁵ Rumptz, Mark; Leland, Robb; McFaul, Sheila; Solinski, Renee and Pratt, Cornelius, "A Public Relations Nightmare: Dow Corning Offers Too Little, Too Late," Public Relations Quarterly, Summer 1992: 30.

⁵⁶ Kaufman, John, "Rockwell Fails in Response to Shuttle Disaster," Public Relations Review, Winter 1988: 8.

⁵⁷ Denny's Nation's Restaurant News, Vol. 27, No. 14 (April 5, 1993), p. 5 as cited in Woods, 9.

⁵⁸ "Denny's Settles Claims in Discrimination Complaints for Record \$46 Million," Jet, 13 Jun. 1994, 6 as cited in Woods, Gail Baker, "It Could Happen to You: A Framework for Understanding and Managing Crises Involving Race," paper submitted to the Public Relations Society of America, 10 Jun. 1996, 8.

Still another example of an organization that damaged its own image before the court battle began was Sears, which in 1992 faced accusations that its automotive centers were regularly overcharging customers. Sears immediately denied the charges. The company later softened its response, but the damage already was done. According to Meyers, "They apparently thought the lawyers would take care of it and that they'd be a success in a court of law, but in a situation like this that should be way down your list of priorities."⁵⁹

In fairness, not all lawyers recommend the "no comment" approach. There are lawyers who "realize that a defendant can win a battle in a court of law and lose in the court of public opinion"⁶⁰ and who "appreciate that there is no point in protecting a company legally if consumer confidence is so undermined that there is no company left to protect by the time a case comes to court."⁶¹ Perhaps they know that, because the court of public opinion can be very influential in determining the success or failure of a company, it is possible to win the legal battle but lose the war. That very reason was behind the decision by the owners of a Florida restaurant who decided not to prosecute a teenager who had spread rumors about the establishment which resulted in a drastic cut in business. The teenager publicly apologized and company officials felt that if they did proceed with legal action, it would have been perceived in the community as "the

⁵⁹ Stevenson, Richard, "Sears Ducks, Then Tries to Cover," The New York Times, 17 Jun. 1992.

⁶⁰ Fearn-Banks, 98.

⁶¹ Birch, 33.

powerful restaurant ruining the life of a well-meaning child who made a mistake in judgment.”⁶²

Some lawyers, including famed defense attorney Robert Shapiro, believe that “there is no question that media coverage can and does affect the ultimate outcome of widely publicized cases” and that influencing the media can be just as consequential as convincing judges and juries.⁶³ Other attorneys agree, including one former U.S. Attorney who, in response to Kenneth Starr’s communication tactics in investigating allegations that President Clinton lied under oath and obstructed justice, said “The public’s perception of how a case is handled is very important. That’s half the battle in high-profile cases.”⁶⁴

As described in the section on conflict resolution, it is possible to end up with a lose-lose situation as well. This happened in 1997, when the Air Force went forward with court martial proceedings against the nation’s first female bomber pilot for offenses which included lying, disobedience and adultery, a case that “boomeranged against the military in the court of public opinion.”⁶⁵ The pilot, First Lieutenant Kelly Flinn, hired a lawyer and public relations firm to plead her case with the news media and succeeded in

⁶² Fearn-Bank, 98.

⁶³ Shapiro, 12.

⁶⁴ Bronner, Ethan, “Testing of a President,” The New York Times, Feb. 14, 1998, A1.

⁶⁵ Kempster, Norman, “Air Force Seeks to Avert Adultery Case Dogfight; Military: Female B-52 Pilot is Offered Chance to Resign in Lieu of Court-Martial and End Awkward Issue for Both Sides,” Los Angeles Times, 16 May 1997.

“framing the case as one of a hide-bound military establishment willing to destroy her career and throw her in jail because, as she put it, ‘I fell in love with the wrong man.’”⁶⁶ She succeeded, in part, due to the fact that her privacy rights combined with legal interpretations of statutory restrictions effectively muzzled the Air Force.⁶⁷ In fact, “despite warnings from senior people in public affairs that the service was going to get its clock cleaned in the court of public opinion, Air Force lawyers insisted that the service basically do nothing to tell its side of the story.”⁶⁸ Still, military spokespersons did what they could to emphasize to the media and to the public that the crux of the court action was on the lying and disobedience charges, not the adultery charge. Still, the public initially took Flinn’s side—in a Gallup Poll taken during the controversy, 62% of those surveyed were sympathetic to the pilot.⁶⁹ In response to mounting public and congressional pressure, the Air Force opted for a general discharge for Lt. Flinn instead of proceeding with the court martial, sparing itself the “national embarrassment of court-martialing her amid a rising storm of public protest.”⁷⁰ Surprisingly, the tide began to

⁶⁶ Richter, Paul and Savage, David, “Courts-Martial Common in Cases Similar to Pilot’s: Military: Experts Contradict Female Flier’s Claim of Unfair Treatment, But AF is not Seen as Blameless for the Record,” Los Angeles Times, 22 May 1997.

⁶⁷ James, Byron, briefing to the Public Affairs Leadership Course, Oct. 1997.

⁶⁸ “Almost a bad memory,” Air Force Times, 15 Dec. 1997.

⁶⁹ Kalb, Bernard, “Discussion on the Aftermath of the Media Assault on Minot Air Force Base” CNN Reliable Sources, 25 May 1997.

⁷⁰ Beck, Joan, “She’s Gone, but the Issue Hangs in the Air,” Chicago Tribune, 25 May 1997.

turn against Flinn once more of the prosecutor's information was released to the public. Even so, a CNN/USA Today/Gallup poll indicated that 53% of respondents felt the Air Force mishandled the situation.⁷¹ In analyzing this crisis, one journalist summed up the case by saying, "If the Air Force made a mistake in Flinn's case, it was in not recognizing sooner when a public relations battle was so far lost that it was no longer worth fighting."⁷² The end result was that the Air Force lost not only its control over the military justice system, but lost public image points as well.

There are many advantages to using a proactive public relations strategy during crises. Although not entirely without criticism, Johnson & Johnson's use of such techniques in response to the Tylenol cyanide crisis has long been extolled as a textbook response to a crisis. The company made efforts to answer all media inquiries, halted all Tylenol advertising and posted a \$100,000 reward for information leading to an arrest. The result was that the brand name went on to quickly regain its 37% share of the pain-reliever market.⁷³ But perhaps most importantly, from a crisis communication point of view, the CEO voluntarily associated himself with the negative story. And ever since,

⁷¹ James.

⁷² Whiting, Charles, "Goodbye and Good Riddance to Air Force's Insubordinate Lt. Flinn," Star Tribune, 23 May 97.

⁷³ Berg and Robb, 100.

says one author, "the media have come to expect the senior managers to deal with reports, to be accessible and to supply all the answers."⁷⁴

Certainly a proactive public relations strategy can be effective in countering what is automatically a stacked deck against organizations involved in crises, and as a result it has been the battle cry for years by seasoned public relations practitioners. The reality is that organizations are automatically assumed to be guilty—"courts, judges, other participants in the process and the news media tend to look at them as suspects."⁷⁵ One study revealed that more than 33% of those surveyed think that a company is "probably guilty" if accused of doing something wrong.⁷⁶ Again, in commenting on the importance of good media relations, Shapiro has said initial headlines "often make the sacred presumption of innocence a myth. In reality, we have the assumption of guilt."⁷⁷

The public's close scrutiny of crisis management may indicate that "the damage inflicted on a corporate reputation is determined more by its handling of the crisis than by the seriousness of the crisis itself," and that people "don't evaluate you on whether you make mistakes, but on how you fix them."⁷⁸ Furthermore, people are not very

⁷⁴ "CIBA Opens its Culture, and its Mind," Reputation Management, Nov/Dec 1996, ([http:// www.register.com/prcentral/rmndcrisis.htm](http://www.register.com/prcentral/rmndcrisis.htm)).

⁷⁵ Lukaszewski, "Managing Litigation Visibility: How To Avoid Lousy Trial Publicity," 19.

⁷⁶ DeMartino.

⁷⁷ Shapiro, 8.

⁷⁸ "CIBA Opens its Culture, and its Mind."

confident that companies in crises tell the truth either. A 1993 survey of 1,000 American adults revealed that more than half of the respondents thought that companies withhold information or give out false information when facing a crisis.⁷⁹ What is even more important, however, is that people may be more upset over such communication tactics than they are about the actual crisis. The same study yielded 95% of respondents saying that “they are more offended when a company lies about a crisis than they are about the crisis itself.”⁸⁰ This is one area in which the military may have a better reputation than its corporate counterparts. A 1995 national survey of more than 350 journalists by The Freedom Forum First Amendment Center indicated that 84% of respondents believed that military personnel are honest when dealing with the news media.⁸¹

Unfortunately, some communicators naively think that “the power of public opinion will pull all else with it, including the courts of public and judicial opinion” not realizing that relying completely on the traditional proactive public relations approach can be dangerous.⁸² As one lawyer cautions, “Just as a public relations disaster may

⁷⁹ Maynard, 55.

⁸⁰ Maynard, 54.

⁸¹ Aukofer, Frank and Lawrence, William, America's Team The Odd Couple: A Report on the Relationship Between the Media and the Military, (Vanderbilt University: The Freedom Forum First Amendment Center, 1995) 32.

⁸² Cooper, 40.

result when lawyers ignore reputation issues, public relations professionals who fail to recognize the legal issues in a crisis put their client at considerable risk.”⁸³

Not only can practitioners unwittingly place their clients at jeopardy in a court of law, but they “must carefully watch what they say, must be sure the information is complete and honest, and must consider as many ramifications as time and deadline pressure permits. Often an innocent quote today is later recycled out of context.”⁸⁴ Such was the case 50 years ago when a military public information officer issued a news release saying that officials from Roswell Army Air Field in New Mexico had recovered a “flying disc.”⁸⁵ The following day a second military news release was issued saying that the object recovered was just a weather balloon, but the damage was done. These initial public affairs actions were the catalyst for rumors that still continue five decades later and are responsible, in part, for the fact that 64% of Americans surveyed in a recent Time/USA Today/CNN/Gallup Poll do not believe the Air Force’s explanation of the Roswell incident.⁸⁶

As discussed, lawyers are naturally concerned about any statements made that would imply culpability during a crisis. Of course there can be advantages to admitting

⁸³ Magid.

⁸⁴ Pinsdorf, Communicating When Your Company Is Under Siege: Surviving Public Crisis, 58.

⁸⁵ Mendoza, Martha, “This Town Cashes in on the Alien Mystique,” Air Force Times, 7 Jul. 1997.

⁸⁶ CNN Headline News, 23 Jul. 1997.

guilt quickly, especially when an organization is responsible for a crisis. When one child died and more than 300 people were sickened by *E. coli* bacteria linked to Jack in the Box hamburgers in 1993, "it took nearly a week for the company to admit publicly its responsibility for the poisonings."⁸⁷ The company at first tried traditional legal strategies of deflecting blame to state health authorities, then to its meat supplier. The result of the mishandled public relations response was that "nervous customers defected to other burger joints in droves." In contrast, when Odwalla Inc. went through a similar crisis in 1996 when one baby girl died from drinking apple juice containing *E. coli*, the company received high marks for public relations. The company was credited with "moving quickly to institute a voluntary recall, cooperating with the Food and Drug Administration, offering to pay the medical expenses of victims affected by contaminated Odwalla products, ... offering to refund the purchase price of any of the company's drinks, even those not being recalled, and for being responsive to the media."⁸⁸ The crisis did result in individual and class-action lawsuits against Odwalla, but the family of the dead girl did not pursue any litigation, saying they did not blame the company. Although the family's decision was made largely for religious reasons, they lauded the company's efforts to meet with them, pay the girl's medical expenses, set up a fund in the girl's memory and renovate a park where the girl used to play.⁸⁹

⁸⁷ "Boxed in at Jack in the Box," Business Week, 15 Feb. 1993: 40.

⁸⁸ Howe, Kenneth, "Odwalla Gets High Marks for Concern," The San Francisco Chronicle, 2 Nov. 1996.

⁸⁹ Simpson, Kevin, "After Tragic Loss, Couple Looks Forward to New Joy," The Denver Post, 20 Jul. 1997.

But, when responsibility for a crisis is not the company's fault or if responsibility has not been determined yet, the last thing a company wants to do is inadvertently say something that could be perceived as an admission of guilt. Spokespersons should never "speculate about cause, consequences or liability."⁹⁰ Indeed, Air Force public affairs officers are to "refrain from discussing Air Force negligence or liability" following an accident.⁹¹ Says one lawyer, "Companies should definitely express their concern, but that doesn't mean you have to take responsibility for whatever is happening to them if the responsibility actually lies elsewhere."⁹² There is a way, as many practitioners know, to "vehemently deny any fault while at the same time expressing remorse that a problem has occurred."⁹³ The art of "apologia," which may or may not include an apology, seeks to rephrase existing charges against a company into a more favorable context⁹⁴ or to "demonstrate the company's concern for the affected parties and avoid public anger directed at the organization."⁹⁵ Various techniques can be effective. Using words like "bad judgment," "mistake" or others that have "relatively insignificant ethical

⁹⁰ Fitzpatrick, "Ten Guidelines for Reducing Legal Risks in Crisis Management," 36.

⁹¹ Air Force Instruction 35-102, Crisis Planning, Management and Response, 22 Jun. 1994 at 6.8.

⁹² "CIBA Opens its Culture, and its Mind."

⁹³ Fitzpatrick and Rubin, 22.

⁹⁴ Hearit, Keith, "Apologies and Public Relations Crises at Chrysler, Toshiba, and Volvo," Public Relations Review, Summer 1994: 115.

⁹⁵ Fitzpatrick, "Ten Guidelines for Reducing Legal Risks in Crisis Management," 36.

implications" is one technique.⁹⁶ Another technique is to issue statements of regret which "simultaneously express sorrow for what has happened yet minimize corporate responsibility for wrongdoing."⁹⁷ However, "words like *ashamed, concerned, disappointed, regret, sad, tragic, unfortunate, unintended, and unnecessary* don't seem to come easily to the lips of corporate executives or spokespeople."⁹⁸

This technique is not without danger either, however. It is possible to overdo it with "too much *mea culpa*," making people "wonder what manner of wimp is running things."⁹⁹ Some people have criticized Texaco CEO Peter Bijur for admitting guilt too quickly following Texaco's racial crisis. Even though he didn't know what was on the tapes—much of which turned out to be indecipherable—he apologized publicly and agreed to form a special panel to look at the company's diversity programs.¹⁰⁰ Although the initial story was relatively short lived and the company's stock bounced back after only three weeks, some felt Bijur capitulated too easily by "unnecessarily giving away \$176 million that belonged to Texaco's shareholders," losing control over his own employment policies and perhaps creating a wider rift between black and white

⁹⁶ Hearit, 116.

⁹⁷ Hearit, 117.

⁹⁸ Lukaszewski, "Managing Litigation Visibility: How To Avoid Lousy Trial Publicity," 21.

⁹⁹ Pinsdorf, Communicating When Your Company Is Under Siege: Surviving Public Crisis, 92.

¹⁰⁰ Bennett, Robert, "Texaco's Bijur: Hero or Sellout?," PR Strategist, Winter 1996: 18.

employees, all without a guarantee that no more payments would be required or that the activist groups would decrease their pressure on the company.¹⁰¹

The Relationship Between Public Relations Practitioners and Lawyers

The Corporate Relationship

In 1996, Fitzpatrick published findings from a survey of 1,000 public relations practitioners regarding their relationship with lawyers. The data from the 376 responses she received indicated that, of the nearly 85% who worked regularly with an attorney, more than 40% described the relationship as "excellent" and nearly 45% described the relationship as "good." The remaining 15% described their relationship as "fair" or "poor."¹⁰² She concluded that these data could suggest "an increased appreciation by public relations professionals and attorneys for the other's function and/or a shared recognition of the need for a more interdisciplinary approach to organizational decision-making."¹⁰³ Her argument is substantiated by the fact that those who did report an excellent or good relationship were those who worked with lawyers the most.

As demonstrated, because lawyers and public relations practitioners sometimes have different goals, conflict between the two is occasionally inevitable. But again, Fitzpatrick says that in reality these conflicts are usually resolved through

¹⁰¹ Bennett, 19.

¹⁰² Fitzpatrick, Kathy, "Public Relations and the Law: A Survey of Practitioners," Public Relations Review, Spring 1996: 6.

¹⁰³ Fitzpatrick, "Public Relations and the Law," 7.

cooperation.¹⁰⁴ Of those she surveyed who had experienced a conflict with a lawyer on a general course of action, more than 39% said that the final decision “was a compromise or joint decision of public relations and legal counsel,” 35% said that a company official made the final decision, eight percent said that they themselves made the decision, nine percent said that the lawyer made the final call, and about 10% said the conflict was resolved by some other means.

However, during litigation the numbers showed a marked increase in an attorney’s influence in a decision involving public communication. Although more than 45% of the respondents reported that joint decisions were made regarding public relations activities during litigation, more than 25% of the time lawyers made the final decision and public relations personnel only made the final decision about three percent of the time.¹⁰⁵ These figures support one author’s view that “public relations in support of litigation is the most sensitive and least understood element of lawyer/PR collaboration.”¹⁰⁶ Fitzpatrick warns that her study shows lawyers are encroaching on the public relations field and indicates that “in situations involving conflicts with legal counsel over the public release of information ... the reality is that public relations professionals are not playing lead roles in these instances.”¹⁰⁷

¹⁰⁴ Fitzpatrick, “Public Relations and the Law,” 5.

¹⁰⁵ Fitzpatrick, “Public Relations and the Law,” 6.

¹⁰⁶ Roschwalb and Stack, 3.

¹⁰⁷ Fitzpatrick, “Public Relations and the Law,” 7.

So although it appears that lawyers and public relations practitioners usually do work well together and compromise on day-to-day public relations decisions, it also seems that, during crises, public relations practitioners are not relied upon as the communication experts. Such encroachment by the legal community concerns John Budd, a former public relations practitioner who is now the CEO of the Omega Group. He believes that

no matter the choice of decision, public relations must be the architect of the communications—in both content and context ... The signals called are primarily—and properly—by the lawyers. But, public relations has a legitimate role in assessing the long-term impact of perceived guilt on the company's—and the CEO's—credibility and reputation and a responsibility for adding this pivotal consideration to the decision-making process. ¹⁰⁸

Also of concern to communicators is that, though there seems to be much compromising going on between lawyers and public relations practitioners, another study by Fitzpatrick and Rubin suggests that public relations people are doing more compromising than the lawyers. They conducted a content analysis of 39 sexual harassment crises and reported that in nearly two-thirds of the cases studied, traditional legal strategies, not public relations strategies, were used by spokespersons.¹⁰⁹

¹⁰⁸ Budd, John, Jr., "GUILTY – Until Proven Innocent: Litigation Journalism Tests Public Relations Acumen," Public Relations Quarterly, Summer, 1994: 13.

¹⁰⁹ Fitzpatrick and Rubin, 21.

The Air Force Relationship

There are currently approximately 400 public affairs officers and 1,300 judge advocates serving in the Air Force.¹¹⁰ Little research beyond "lessons learned" from specific crises has been conducted on the relationship between public affairs and legal functions. Some knowledge can be obtained, however, by examining the two career fields.

Newly acquired public affairs officers and judge advocates both receive specialized military training in their respective fields. The Public Affairs Officer Course at Fort Meade, MD, does have lesson plans which address some legal/mass communication issues such as libel and slander, The Privacy Act, The Freedom of Information Act, courts martial and criminal investigations.¹¹¹ The school does not have any specific lesson plans which address the relationship between public affairs and lawyers or the balance between public affairs and legal counsel, although one class devoted to crisis communication and accident response includes mentioning that "PA and Legal need to coordinate closely on those issues."¹¹² Similarly, the Judge Advocate General School at Maxwell Air Force Base, AL, does not have any specific curriculum units dedicated to the relationship between the two fields, but judge advocate students do

¹¹⁰ "U.S. Air Force Almanac 1997," Tamar Mehuron, ed., Air Force Magazine, May 1997: 34.

¹¹¹ Kelly, Mike, Defense Information School Instructor, personal email, 3 Feb. 1998.

¹¹² Kelly, Mike, Defense Information School Instructor, personal email, 21 Apr 97.

get a one-hour block of training regarding public affairs.¹¹³ Students also receive briefings on such things as media relations and professional ethics, and managing the flow of information during highly-publicized court proceedings.¹¹⁴

The rank structure inherent in the military could affect the relationship since judge advocates usually outrank public affairs officers. This disparity of rank, and with it a corresponding disparity of power and influence, can be seen from the lower levels—the individual Air Force base—to the highest level where the senior Air Force lawyer is a two-star general while the top Air Force public affairs officer is only a one-star general. One possible reason for this disparity between the two fields may reflect the fact that, although public relations has been practiced for centuries, the legal vocation is older and more recognized as a profession.¹¹⁵ Another reason could be the amount of higher education each brings to the table. At the entry level, all public affairs officers and judge advocates are required to have an undergraduate degree and receive technical training at Department of Defense and Air Force schools. But, the lawyers also must earn a law degree prior to becoming a judge advocate.

Air Force regulations occasionally address the relationship between military lawyers and public affairs officers, usually in the context of guidance regarding specific crises. For instance, media relations guidance for public affairs officers directs them to

¹¹³ Davies, Kirk, Military Justice Division, Judge Advocate General School, personal email, 9 Feb. 1998.

¹¹⁴ Shepherd, Dennis, Staff Judge Advocate Course Director, personal email, 21 Apr. 1997.

¹¹⁵ Fearn-Banks, 98.

coordinate closely with judge advocates "before releasing any information" prior to a trial.¹¹⁶ And while the guidance is somewhat detailed at times concerning what information is releasable and what information must be withheld regarding legal issues, a catch-all phrase still instructs public affairs officers to "seek the advice of the staff judge advocate on matters not clearly addressed here...."¹¹⁷ Such instructions imply a very active role by judge advocates regarding public affairs decisions. This implication could be evidence that, in issues involving legal concerns, the real decision-making authority regarding public affairs lies with the legal community, not the public affairs community. Regardless, the bottom line is that the Air Force is supposed to "balance public interest in the administration of justice against the accused's right to a fair trial and right to privacy" when determining whether to release information regarding a criminal proceeding.¹¹⁸

Finding Common Ground

Many lawyers and public relations people recognize the advantages of working together and know "what horses pulling beer wagons have long known—that it is easier and more productive to pull together."¹¹⁹ Creighton Magid is one such attorney who believes that "a client is best served if legal and communications counsel work in

¹¹⁶ Air Force Instruction 35-206 at 1.7.7.

¹¹⁷ Air Force Instruction 35-206 at 1.7.7.4.

¹¹⁸ Air Force Instruction 51-2, Administration of Military Justice, 7 Sep. 1993 at 1.13.

¹¹⁹ Roschwalb and Stack, 5.

concert, with an appreciation of the concerns each faces.”¹²⁰ Indeed, the Air Force Judge Advocate General states that “PA and JA offices, like all other staff agencies, are working toward the same goal. That is, to provide commanders with the best possible consolidated professional advice on issues impacting mission accomplishment.”¹²¹ And Fitzpatrick believes that, although lawyers and public relations people “often disagree on the best approach to crisis communications, each plays a valuable role in ensuring a company’s success in surviving a crisis with both its reputation and legal standing intact.”¹²² These and other professionals who believe in a balanced legal and public relations approach indicate that education, training and planning are key to achieving that balance.

Education and Training

Although there are some public relations practitioners who do have both communications and legal training, most public relations people usually do not have a grasp of the law. Again, Fitzpatrick has some startling data. Her study of practitioners asked respondents about their familiarity with categories of U.S. law that could impact their organization and the majority said that they were just “somewhat” or “not at all” familiar.¹²³ Other results include:

¹²⁰ Magid.

¹²¹ Hawley, Bryan, Memorandum to the Air Force Director of Public Affairs, 3 Nov. 1997.

¹²² Fitzpatrick, “Ten Guidelines for Reducing Legal Risks in Crisis Management,” 34.

¹²³ Fitzpatrick, “Public Relations and the Law,” 3.

More than one-half (51.1%) indicated no familiarity with SEC regulations; more than 40% reported no familiarity with commercial speech (41.1%), financial public relations (45.3%) or professional malpractice (48.0%); more than one-third (34.9%) said they were "not at all" familiar with contracts, and slightly more than 21% reported no familiarity with access to information laws.

One could say that, with such a lack of knowledge regarding law, it is not surprising that, in cases of conflict with lawyers during litigation, lawyers often have the upper hand in public relations decisions. Indeed, it is partly this lack of knowledge that Fitzpatrick suggests is leading communicators to make themselves and their clients legally liable.¹²⁴ Nevertheless, she argues that ignorance is no excuse, and that "in order to provide effective representation, practitioners must acquaint themselves with the legal issues involved both in their client organizations' operations and in communications."¹²⁵ The way to do this, of course, is interdisciplinary training for lawyers and public relations people because they "must begin to understand their respective roles in order to use the strengths of both professions."¹²⁶ According to Fitzpatrick, those communicators who are most successful during crises "do not rely totally on attorneys ... They recognize the importance of becoming legally literate themselves and seek out professional development opportunities in this area."¹²⁷

And although most lawyers do not have any mass communication training either, more and more are recognizing the benefits of learning how to do public relations. The

¹²⁴ Fitzpatrick, "Public Relations and the Law," 7.

¹²⁵ Fitzpatrick, "Ten Guidelines for Reducing Legal Risks in Crisis Management" 34.

¹²⁶ Roschwalb and Stack, 5.

And although most lawyers do not have any mass communication training either, more and more are recognizing the benefits of learning how to do public relations. The American Bar Association provides media training for its officers, and many lawyers now view public relations as one of the tools at their disposal to help win a case. Certainly Shapiro is one of many attorneys who believe that "the lawyer's role as a spokesperson may be equally important to the outcome of a case as the skills of an advocate in the courtroom."¹²⁸ These attorneys may look to public relations experts for assistance just as they seek help from psychologists, jury selection consultants, forensic scientists, and others.¹²⁹ Indeed, one New York State Supreme Court justice has commented that "lawyers now feel it is the essence of their function to try the case in the public media."¹³⁰ Air Force defense attorney Capt. Joseph Cazenavette agrees, saying he "wouldn't be surprised if defense counsels decide to go to the media more often," especially in situations like Lt. Flinn's adultery case.¹³¹ Some attorneys also believe public relations can benefit attorneys not only by supporting their cases in the court of

¹²⁸ Shapiro, 7.

¹²⁹ Stein, M.L., "Lawyer Says It's OK to Lie To the Media," Editor and Publisher, 28 Aug. 1993: 10.

¹³⁰ Hoffman, Jan, "May It Please the Public: Lawyers Exploit Media Attention as a Defense Tactic," The New York Times, 22 Apr. 1994.

¹³¹ "Defense Lawyers Find 'Court of Public Opinion' Can Protect Their Clients," Air Force Times, 28 Jul. 1997.

public opinion, but also by improving the image of the legal profession and marketing legal services to potential clients.¹³²

The Air Force already has begun some occasional cross-training between the two fields, reflecting the fact that "JA needs to be more conscious of the public affairs role and public affairs officers need to be savvy about the military justice system."¹³³ Public affairs officers have spoken at the Judge Advocate General School and judge advocates have spoken at some public affairs conferences. Recognizing the value of such opportunities, both sides are currently in the process of offering more. A media guide will be distributed to all Air Force legal offices, and coordination is underway to put information, not only about the military justice system in general but also facts about ongoing high-visibility court cases, on the Internet.¹³⁴ The Air Force also is establishing a Public Affairs Center for Excellence to conduct research and further develop the public affairs curriculum taught to officers as part of their professional military education.¹³⁵ Additionally, in the wake of recent cases which have attracted intense media scrutiny, public affairs officers and judge advocates have been aggressive in hosting background briefings with journalists to educate them on legal terms and the military justice system. Recently, a symposium was held at the Judge Advocate General

¹³² Roschwalb and Stack, 5.

¹³³ Rives.

¹³⁴ Rives.

¹³⁵ Ivy, Jack, Air University director of public affairs, personal telephone conversation, 21 Jan. 1998.

School to discuss how the media affect the administration of military justice, attended by senior Air Force lawyers, public affairs officers and Lt. Flinn's defense attorney. Some senior public affairs officers and attorneys also are trying to convince Air Force officials to "loosen up" their interpretation of laws and regulations that traditionally have muzzled the Air Force from telling its side of the story.¹³⁶

Planning

The first rule of many crisis communicators is borrowed from the Boy Scouts: be prepared.¹³⁷ This is doubly true in a crisis where there is "little time for group meetings or consensus."¹³⁸ Over and over again this sort of statement is echoed:

- "advocates can avoid turf problems during crises by establishing a positive relationship *before* crisis strikes"¹³⁹
- "when legal proceedings begin, particularly those involving high-profile individuals, a strategy concerning the media must be jointly planned"¹⁴⁰
- "encourage management to involve its corporate lawyers early in the crisis planning process ... it is then possible to set guidelines for what can and cannot be said when a crisis does happen"¹⁴¹

¹³⁶ Whitaker, Johnny, Air Combat Command Director of Public Affairs, personal email, 12 Nov. 1997.

¹³⁷ "Crisis Public Relations," Dun's Business Month, Aug. 1983: 50.

¹³⁸ Budd, 13.

¹³⁹ Fitzpatrick, "Ten Guidelines for Reducing Legal Risks in Crisis Management," 34.

¹⁴⁰ Roschwalb and Stack, 5.

¹⁴¹ Birch, 32.

- “the necessity of merging law and public relations leads to an even greater need for pre-crisis planning by representatives in both fields”¹⁴²
- commanders, staff judge advocates and public affairs officers must “work together at every step”¹⁴³

Similarly, Air Force attorney James Swanson has stated that “it has never been more critical for judge advocates and public affairs officers, under the direction of commanders, to formulate and pre-plan cohesive media responses that tell the Air Force story as completely and persuasively as possible, yet at the same time do not impinge upon or impair the judicial process. That is a balance, I am convinced, that can be struck.”¹⁴⁴ But given the importance of planning, a 1995 survey of public relations practitioners found that less than 60% “worked in organizations with written crisis plans.”¹⁴⁵ Although this is up 10% from a similar survey conducted 10 years ago, it is unknown how many of the crisis plans actually encourage cooperation between lawyers and communicators. Similarly, although nearly all Air Force public affairs offices have what are known as “crash kits” which include detailed plans for aircraft accidents, natural disasters and other such crises, it is unknown how many offices have a

¹⁴² Fearn-Banks, 99.

¹⁴³ Swanson.

¹⁴⁴ Swanson.

¹⁴⁵ Guth, David, “Organizational Crisis Experience and Public Relations Roles,” Public Relations Review, Summer 1995: 132 as cited in Woods, 4.

corresponding plan for dealing with legal crises like high-visibility courts martial and criminal investigations.

Summary

The literature regarding conflict theory examines the variables that affect the course of conflict, including the characteristics of the parties in conflict, their prior relationship to one another, the nature of the issue giving rise to the conflict, the social environment within which the conflict occurs, the interested audiences to the conflict, the strategy and tactics employed by the parties in the conflict, and the consequences of the conflict to each of the participants and to other interested parties. Conflict resolution can take several different forms -- among them forcing (win-lose), compromise (lose-lose), or problem-solving (win-win) -- which determines whether the results will be productive or destructive. Problem-solving methods are the most likely to achieve productive consequences, and organizations can use various techniques to encourage such behavior including the sharing of information; the review and adjustment of the conditions that promote cooperation versus conflict; the review and adjustment of the perception, feelings and attitudes between parties; mutual determination of the problem, nonjudgmental generation of potential solutions; evaluation of the solutions; and agreement on the final decision.

The literature shows conflict can and does occur between public relations professionals and lawyers, especially during crises, and that there are advantages and disadvantages to using either a strictly legal or a strictly public relations response. As conflict theory suggests, the best results occur when a combined approach is used by

lawyers and public relations people who work closely together in cooperation. Although much of the research regarding the relationship between lawyers and public relations people in corporate service is self-reported by public relations people themselves, it indicates that a relatively good relationship exists, but that problems still remain which can affect how an organization fares in both a court of law and the court of public opinion. Professionals and researchers from both areas agree that interdisciplinary training among lawyers and public relations practitioners and planning between the two before crises occur are needed to improve the relationship, further validating conflict theorists who propose similar techniques to resolving conflict. The literature review also suggests possible characteristics of conflict (different objectives, the withholding of information, lack of education or training regarding the other side's area of expertise, competition over saying too much versus saying too little, lawyers encroaching on the public relations function), ways to resolve such conflicts (forcing, compromising or problems solving), and possible destructive or productive results.

Research Questions

There are no data on the relationship between Air Force public affairs and legal functions. However, the literature review allows one to assume that, although in general public affairs officers and judge advocates work well together, some conflict exists between the two functions that may result in destructive consequences for the Air Force as a whole. This study itself generated conflict between the two functions at the highest Air Force level when the legal community refused to officially support the research because some feared the survey questions had the potential of "artificially creating a

perception that PA and JA offices are 'opponents' when it comes to public relations issues."¹⁴⁶ Using conflict theory as a model, destructive results occur when the Air Force as a whole loses in a court of law, the court of public opinion, or both; and productive results occur when the Air Force wins in both courts. Finally the literature suggests ways to encourage organizations to limit the destructive effects of conflict and use problem-solving techniques. Such tactics include meetings between the two to adjust perceptions and attitudes, interdisciplinary education and/or training, information sharing, joint planning, discussion of alternative solutions, and building consensus.

However, these assumptions should be explored further because the literature does not indicate what actually holds true for the U.S. Air Force. Specific questions need to be answered before making recommendations on how to improve the relationship between the two so that the Air Force, as an organization, is better served. The questions include the following: What are the characteristics and frequency of conflict between the two? How is such conflict usually resolved? What are the usual results to the Air Force as a whole? And finally, how can the Air Force decrease the amount of conflict between public affairs and legal functions or productively resolve existing conflicts?

¹⁴⁶ Hawley, Bryan, Air Force Judge Advocate General, Memorandum to the Air Force Director of Public Affairs, 3 Nov. 1997.

CHAPTER 3 MATERIALS AND METHODS

Research Design and Sampling

An on-line survey was conducted of Air Force public affairs officers, judge advocates and commanders. At the time of the survey, approximately 400 public affairs officers, 1,300 judge advocates and 160 commanders (wing level and above) were serving on active duty in the Air Force. Population lists with name, rank and location were provided by the Air Force, and a census was taken of the public affairs officers and commanders. A random sample of approximately 425 judge advocates was taken using skip increments. After the judge advocate sample was taken, the researcher realized that the population list provided by Air Force did not include any generals. Since the most senior lawyers would likely have the most impact on Air Force policy, the researcher added the names of these five officers to the random sample.

A few design concerns existed. A recent survey of mailing lists by a commercial firm found only 37% of electronic mail addresses were accurate at any given time.¹ And although another company which develops and markets electronic-survey software

¹ Compton, David, Secretary of the Air Force Office of Public Affairs Technology Team, personal email, 18 Jun 1997.

and services reported between 70 and 80 percent of email addresses are accurate,² the researcher was concerned that some members of the survey populations would not be reachable through electronic mail because they lack Internet access or because of out-of-date electronic email addresses. To attempt to alleviate this concern, the researcher traveled to the Pentagon to compile electronic mail addresses via phone and using existing email address books. By doing so, the researcher was able to obtain what he believed to be correct email addresses for 372 public affairs officers, 387 judge advocates and 163 commanders. Even so, when the researcher sent the survey emails out three weeks later, approximately 15% were returned as undeliverable. Still, this was a improvement over the percentage of email addresses that are typically accurate in electronic surveys. After the emails were sent out, the researcher encountered what may be inevitable in an online survey conducted without the use of respondent identification and password security options. A few respondents asked the researcher if they could encourage others in their office or at their military installation to fill out the questionnaires too. The researcher granted the requests provided only those in the target population filled out the questionnaires. For example, when a lawyer asked if he could refer other lawyers in his office to the survey web site, the researcher asked that he only refer active-duty legal officers—not civilians or enlisted personnel—to ensure the integrity of the survey population. To the researcher's knowledge, this added seven names to the judge advocate sample. However, the researcher had no way of knowing exactly how often this happened, since survey recipients may have referred others to the web site

² Rudd, Robert, Decisive Technology Corporation, personal email, 9 Dec. 1997.

without informing him. As a result of undeliverable emails and the knowledge of some people being referred to the survey, the final survey samples were 340 public affairs officers (85% of the total population), 316 judge advocates (23% of the total population) and 134 commanders (82% of the total population).

Another design concern was that subjects might have difficulty responding because of random computer problems such as one or more computer servers being down for service, busy phone lines to connect to a service provider, etc. To address this concern, the researcher gave recipients nearly four weeks to respond so that most should have been able to connect and complete the survey even if such random computer problems existed at their first attempt. The researcher received 13 emails from survey recipients who were having problems accessing the web site, but the researcher asked them to keep trying, and since the researcher only received feedback from two of those individuals indicating they could not connect to the web site after further tries, indications are that most of these people eventually were able to connect. The researcher sent these two remaining recipients email versions of the survey (with the questions as part of the email instead of on the web page), and received their input via a return email. The researcher received one survey response via regular mail. The researcher received 18 blank, incomplete or duplicate survey forms, indicating that either an error occurred in the transmission, the respondent sent the response before he/she was finished, or sent the survey response twice. These responses were not coded.

A third concern was whether the response rate would be high enough to permit generalization to the three populations. In hopes of increasing the response rates, the

researcher asked the Air Force's top public affairs officer and the senior judge advocate to send out a joint message encouraging commanders and their subordinates to complete the survey. However, because the Air Force Judge Advocate General decided not to officially support the survey, he refused to provide any endorsement. Nevertheless, the Air Force's Director of Public Affairs did send a message out to public affairs officers prior to the questionnaires being sent out, and the researcher personally contacted major command public affairs officers to urge them to encourage commanders and judge advocates to participate. Two weeks into the survey the response rate was approximately 17% so the researcher sent out reminder emails to survey recipients.

A final design concern existed regarding the survey instruments themselves. Since survey respondents were asked for self-reported information, one could suspect that biased information might have been obtained. However, by asking similar questions regarding conflict among all three groups of participants—public affairs officers, judge advocates and commanders—the data obtained are more rigorous than would have been the case had only one group been surveyed.

Survey Instruments

Each recipient received an electronic mail (Appendix A) from the researcher “pointing” them to the web site where the survey was stored. After approximately two weeks the researcher sent out reminder emails (Appendix B) to recipients to encourage survey completion. A few days before the completed questionnaires were due, the researcher also sent out a reminder message to The Air Force PA Forum, an online discussion group of public affairs practitioners.

The three questionnaires (Appendix C) were developed based on the literature review and from discussions with senior Air Force public affairs officers and judge advocates. To achieve greater validity, the questions were a combination of specific multiple choice and open-ended formats. A few questions were group specific regarding knowledge of legal or public affairs topics, but most questions were general to all recipients. Demographics and/or job knowledge questions were asked in Part 1 of the questionnaires. Part 2 included questions about the frequency and characteristics of conflict. Respondents were asked in Part 3 about how such conflict is usually resolved and what the usual results of conflict are for the Air Force. Finally, Part 4 of the questionnaires requested input from respondents on how to decrease conflict or resolve conflict better. The instruments were pretested on one or two members of each group and minor changes were made based on the feedback received. The questions generated some conflict in the legal community because a few senior Air Force lawyers believed the wording of some questions implied that destructive conflict necessarily exists between public affairs and legal functions and that the win-lose terminology used by conflict theorists was too confrontational. Based on this feedback, the researcher changed the wording of two questions.

Coding and Data Analysis

A sample survey response is included as Appendix D. The structure of the web survey and a common gateway interface program allowed the submitted information from respondents to be automatically converted into numerical data, which then was mailed electronically to the researcher. The researcher then put this content into a data

base and analyzed it using statistical computer software. While most of the data were analyzed using descriptive statistics and frequencies, some relationships were tested as post hoc analyses.

The common gateway interface transmitted the responses to open-ended questions verbatim as text in the electronic mail sent to the researcher. The researcher coded these data into categories which were pretested by an independent coder. The pretest, using one open-ended answer from each survey population, yielded a coefficient of reliability of 88%, using the equations $C.R. = 2M/(N_1 + N_2)$ where M is the number of coding decisions made in agreement, N_1 is the number of coding decisions made by the researcher and N_2 is the number of coding decisions made by the independent coder.³ Although this method does not account for the level of agreement by chance alone, the researcher determined this method was the most realistically feasible because of the high number of responses and categories from the open-ended data.

Following the pretest, the researcher and the independent coder each individually categorized the 220 open-ended responses, yielding an initial 75% agreement rate. Following a second detailed review of the open-ended data and the coding sheets by both the researcher and the independent coder, each made a number of coding changes, resulting in a final 96% agreement rate. The researcher acknowledges that such a large increase in agreement may seem atypical. However, each disagreement from the first

³ Holsti, Ole, Content Analysis for the Social Sciences and Humanities, (Reading, Mass: Addison-Wesley Pub. Co., 1969) 141.

coding procedure was reviewed by the researcher and the independent coder. The subsequent changes were a result of the following:

- The researcher and the independent coder neglected to find some of the categories during the first coding procedure. With more than 200 answers to code, ranging from one sentence to more than a page and each with an average of three themes per answer, this was not surprising.
- It became obvious that, for at least two questions, the categories derived by the researcher were not as mutually exclusive as they could have been – resulting in some coding disagreements during the first coding procedure. When this was discovered, the researcher clarified the meaning of the categories so that they became mutually exclusive.
- Some answers or categories were difficult for the independent coder to understand, due to military jargon, resulting in some disagreement during the first coding session. The researcher explained the meaning of these words so that the independent coder could understand.

Despite the large increase in agreement, there were some coding decisions that continued to be disagreed over – and each individual held firm to his original decisions. After these coding discussions occurred, the researcher used his own coding decisions for analysis. Pertinent quotes also were taken from the open-ended data to be used in the final chapter.

Response Rate

The researcher received 248 responses or 31% of the total number of questionnaires sent out (790). The public affairs response rate was 38% (130 responses), the commander response rate was 38% (51 responses), and the judge advocate response rate was 21% (67 responses).

Response rates from electronic surveys are not easy to predict. In addition to limitations associated with mail surveys, electronic surveys are dependent on recipients' experience with computers and technology.⁴ In this case, recipients were expected to have a familiarity with the Internet. Although most Air Force personnel by now have become accustomed to conducting business on the web, the researcher likely lost a few respondents with the extra step of requiring respondents to go from email to a web site. The response rate also is affected by the length of the survey, the amount of time given to fill out the survey, the respondents' connection to the survey topic, whether any incentive was given and whether any follow-up reminders were sent. Decisive Technology Corporation has received a 15-40 percent response rate for an electronic survey sent with no incentives and no follow-up reminders and a 20-45 percent response rate for a similar survey sent with both an incentive and follow-up reminders.⁵ Their response rate from an electronic survey most similar to the researcher, with no incentive and one follow-up reminder, yielded 30%. These comparisons show that the researcher's response rate of 31% is comparable to the rate received by others conducting electronic surveys. Additionally, Dr. Marshall Rice, a professor of market research at York University, believes that a response rate of more than 30% is "excellent."⁶ However with only 32% of all public affairs officers, 31% of all commanders and 5% of all judge advocates

⁴ Rudd.

⁵ Rudd.

⁶ Rice, Marshall, York University Associate Professor of Marketing, personal email 8 Dec. 1997.

having responded, the data cannot necessarily be generalized to any of the three survey populations. Still, the data gathered were useful in determining what some members of the survey populations thought about the relationship between public affairs and judge advocate functions.

CHAPTER 4 FINDINGS

General Information

Demographics

Of the 130 public affairs officers who responded, approximately half were company-grade officers—lieutenants and captains—and half were field-grade officers—majors, lieutenant colonels, colonels and above (See Figure 4-1). Their years of public affairs experience ranged from six months to 33 years, with a mean of 10 years. Of the 67 judge advocates who responded, more than half were field grade officers and the remainder were company-grade officers. Their years of legal experience ranged from one to 30 years, with a mean of 11 years.

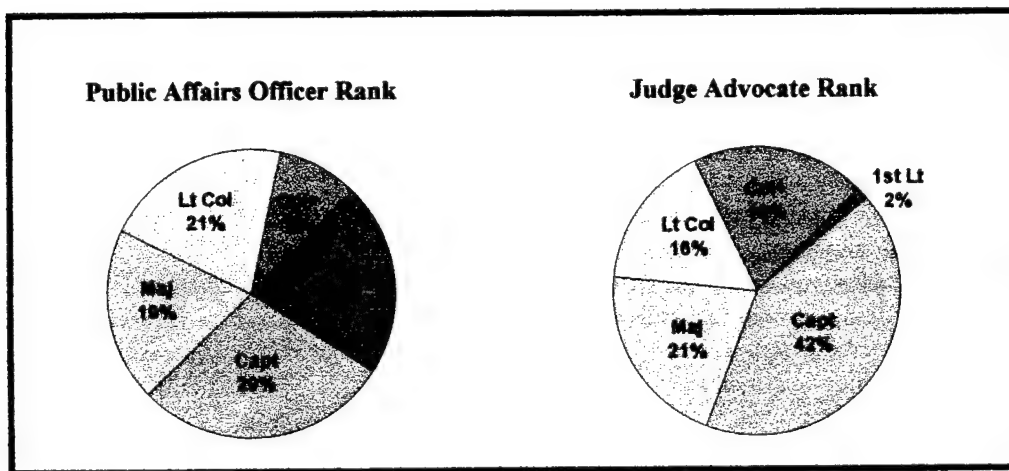


Figure 4-1

Of the 51 commanders who responded nearly 65% were at the wing level (usually each Air Force base has one wing commander who is in charge at that installation), 18% were at the numbered air force level (in charge of many Air Force bases), 16% were at the major command level (in charge of a few numbered Air Forces) and 2% were at the unified command level (one of the highest military commands containing all types of service members – Air Force, Army, Navy, etc.). Their years of command experience ranged from one to 33 years, with a mean of 7 years.

Job Knowledge

The public affairs and judge advocate respondents were asked about their knowledge of areas involving legal and public affairs issues. Both appeared to be more familiar with The Privacy Act and The Freedom of Information Act but less familiar with other issues that are common to both functions (See Table 4-1 and 4-2).

Table 4-1

Public Affairs Officer Knowledge Of...	Not At All Familiar	Somewhat Familiar	Very Familiar
Civil Litigation	25%	69%	7%
Military Justice System	2%	73%	25%
Criminal Investigations	12%	75%	13%
Censorship	9%	52%	39%
The Privacy Act		48%	52%
The Freedom of Information Act		57%	43%

Table 4-2

Judge Advocate Knowledge Of...	Not At All Familiar	Somewhat Familiar	Very Familiar
Media Relations	12%	66%	22%
DoD Principles of Information	49%	34%	16%
Censorship	21%	48%	31%
The Privacy Act	2%	48%	51%
The Freedom of Information Act		46%	54%

When asked if their offices had any crisis communication plans that specifically dealt with legal issues such as high visibility courts martial and investigations, the majority (69%) of public affairs respondents said they did not (See Figure 4-2).

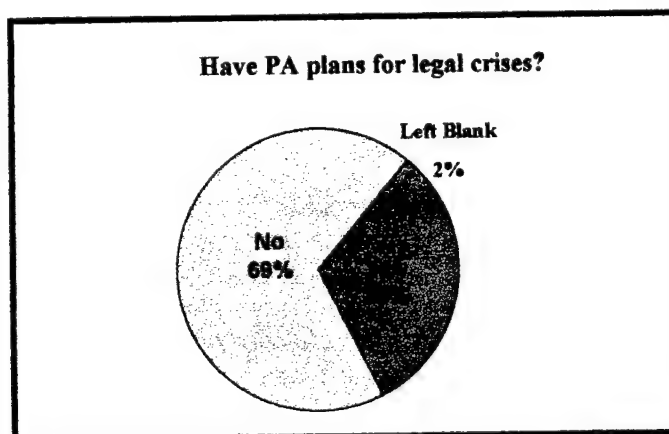


Figure 4-2

Frequency and Characteristics of Conflict

Public Affairs and Judge Advocate respondents indicated similarly how much conflict exists between the two functions. However, the commander respondents believed conflict occurred much less (See Table 4-3). The majority of all three groups said that there was more conflict during a crisis (See Table 4-4).

Table 4-3

How Much Conflict Exists Between PA and JA?

Respondents	Never	Rarely	Sometimes	Usually	Always
Public Affairs Officers	4%	33%	47%	15%	1%
Judge Advocates	2%	37%	49%	10%	2%
Commanders	10%	57%	33%		
Combined Data	4%	39%	45%	11%	1%

Table 4-4

Is there more conflict during a crisis?

Respondents	Yes	No	The Same	N/A
Public Affairs Officers	47%	25%	25%	2%
Judge Advocates	63%	19%	16%	2%
Commanders	39%	35%	22%	4%
Combined Data	50%	26%	22%	2%

All respondents were asked to identify the major characteristics of conflict between public affairs and legal functions. It appeared that different missions, objectives and priorities of the two functions; balancing the “right to know” and privacy rights; and the media environment characterized much of the conflict between the two (See Table 4-5). Approximately four percent of all respondents thought this question was “not applicable.”

Table 4-5

Major characteristics of conflict between public affairs and legal functions

Respondents	Rank Disparity	Different missions, objectives, priorities	Media Environment	Lack of Info Sharing	Balancing “right to know” and privacy rights	Lack of education and training
Public Affairs Officers	16%	64%	67%	40%	69%	44%
Judge Advocates	2%	68%	52%	28%	42%	55%
Commanders	2%	57%	49%	28%	67%	26%
Combined Data	9%	63%	59%	34%	61%	43%

Approximately 25% of the public affairs respondents indicated that “other” characteristics of conflict existed. These responses were coded into 15 categories (See Table 4-6).

Table 4-6

“Other” Major Characteristics of Conflict Between PA and JA	Number of PA Respondents Who Gave This Answer
JA hesitates to release information or doesn't provide timely, accurate, understandable information	7
Disagreement between PA and JA and between armed services regarding interpretation of regulations, policies and/or The Privacy Act	6
Media and/or defense attorney actions create environment where AF cannot respond without jeopardizing the legal process or an individual's rights	5
PA and JA inherently have different objectives, goals, tactics, behaviors	4
PA doesn't understand JA and/or JA doesn't understand PA	4
Disparity of experience, rank, credibility between PA and JA and they are treated differently	4
JA doesn't care about public opinion during a court case or JA doesn't understand that they can win in court but lose in the court of public opinion and hurt the Air Force	3
Commanders think legal issues are more important than PA issues	2
Media environment creates time constraints	2
JA and/or other agencies don't share information with PA	2
Court of law rules are more solid, court of public opinion rules are not	1
Coordination with HQ causes delays	1
JA is intimidated by media issues	1
JA doesn't want to be in front of the camera even though they're the legal experts	1
Inexperienced PA people don't have ability to manage the information climate	1

Approximately 22% of the judge advocate respondents indicated that “other” characteristics of conflict existed. These responses were classified into 11 categories (See Table 4-7).

Table 4-7

“Other” Major Characteristics of Conflict Between PA and JA	Number of JA Respondents Who Gave This Answer
Disagreements over what information is releasable and what information should be withheld	2
Disparity of experience, rank, and/or credibility between PA and JA	2
PA doesn’t understand JA and/or JA doesn’t understand PA	2
Judicial concerns/privacy rights/undue influence vs. “the right of the public to know”	2
Media and/or defense attorney actions create environment where the Air Force cannot respond without jeopardizing the legal process or an individual’s rights	1
PA’s goal is to give everything to the media	1
Other conflict exists in addition to military justice: contract, labor, etc	1
PA doesn’t coordinate with JA regarding legal matters	1
PA wants simple/fast answers	1
The release of information compromises legal work	1
The transitory nature of both PAO’s and reporters prevents good long-term relationships	1

Approximately 17% of the commander respondents indicated that “other” characteristics of conflict existed. These responses were classified into five categories (See Table 4-8).

Table 4-8

“Other” Major Characteristics of Conflict Between PA and JA	Number of Commander Respondents Who Gave This Answer
Conflict exists when commanders allows it to exist–failure of command	2
Reluctance to be candid because of political factors	1
PA and JA inherently have different objectives, goals, tactics, behaviors	1
Fear of lawsuits	1
Tendency to withhold information to protect the accused	1

When the “other” categories from all three groups were combined for this question, six themes were found to be the most frequently occurring (See Table 4-9). Additionally, 10 respondents indicated that little or no conflict existed between public affairs and legal functions.

Table 4-9

"Other" Major Characteristics of Conflict Between PA and JA	Number of ALL Respondents Who Gave This Answer
JA hesitates to release information or doesn't provide timely, accurate, understandable information	7
Media and/or defense attorney actions create environment where the AF cannot respond without jeopardizing the legal process or an individual's rights—tendency to withhold information to protect the accused	7
Disagreement between PA and JA and between armed services regarding interpretation of regulations, policies and/or The Privacy Act	6
PA doesn't understand JA and/or JA doesn't understand PA	6
Disparity of experience, rank, credibility between PA and JA and they are treated differently	6
PA and JA inherently have different objectives, goals, tactics, behaviors	5

How Conflict Is Usually Resolved

Survey respondents were asked how conflict between public affairs and legal functions is usually resolved. The majority of all the respondents felt that conflicts between the two were resolved through consensus where both sides were satisfied with the decision. However, the data also show that, during conflicts, the legal course of action is taken 25 times more often than the public affairs course of action (See Table 4-10). Approximately 11% of all the respondents said this question was "not applicable" and one percent did not answer the question.

Table 4-10

How is conflict between PA and JA usually resolved?

Respondents	PA course of action is taken (win-lose)	JA course of action is taken (win-lose)	Compromise: Both sides are unsatisfied (lose-lose)	Consensus: Both sides are satisfied (win-win)
Public Affairs Officers	2%	28%	12%	52%
Judge Advocates	2%	24%	18%	40%
Commanders		18%	10%	55%
Combined Data	1%	25%	13%	49%

Respondents also were asked what the usual results were for the Air Force as a whole after a conflict between legal and public affairs has been resolved. While 22% of respondents felt this question was "not applicable" and one percent did not answer the question, the majority of those who did respond indicated that, following a conflict between legal and public affairs functions, the Air Force usually achieves its legal goals but loses public support. Only 31% thought the Air Force achieves its legal goals and wins public support following a conflict between the two (See Table 4-11).

Table 4-11

Respondents	Wins public support but does not achieve legal goals (win-lose)	Achieves legal goals but loses public support (win-lose)	Loses public support and does not achieve legal goals (lose-lose)	Wins public support and achieves legal goals (win-win)
Public Affairs Officers	2%	42%	5%	31%
Judge Advocates		27%	19%	25%
Commanders		31%	8%	37%
Combined Data	1%	36%	9%	31%

How To Decrease Conflict or Better Resolve Conflict

All respondents were asked to suggest ways to decrease conflict between public affairs and legal functions or how to better resolve conflict. They suggested that the best ways to do so are to have interdisciplinary education/training for public affairs officers and judge advocates; encourage more joint planning and information sharing; and to clarify the policies regarding the release of information and privacy rights (See Table 4-12). Approximately two percent of all respondents thought the question was “not applicable.”

Table 4-12

How To Decrease Conflict or Better Resolve Conflict

Respondents	Education and Training	More info sharing	Clarify policies	Joint Planning	Meetings to adjust feelings, attitudes, etc.	More consensus building	Do what is best for the AF
Public Affairs Officers	72%	67%	58%	63%	44%	48%	58%
Judge Advocates	66%	57%	51%	72%	40%	39%	40%
Commanders	47%	43%	57%	51%	28%	33%	49%
Combined Data	65%	59%	56%	63%	40%	42%	51%

More than 20% of public affairs respondents indicated that “other” ways to decrease conflict existed. These responses were coded into 18 categories (See Table 4-13).

Table 4-13

“Other” Ways to Decrease Conflict Between PA and JA	Number of PA Respondents Who Gave This Answer
Interdisciplinary education and/or training between PA and JA	7
More communication/respect/understanding between PA and JA	5

Table 4-13—continued

“Other” Ways to Decrease Conflict Between PA and JA	Number of PA Respondents Who Gave This Answer
Do what is best for the Air Force” not what is best for PA, JA or individuals	4
Need to get the Air Force side of the story out without damaging legal case	4
Realize the importance of public opinion	3
Educate commanders on PA/JA issues	3
Educate PA’s on how to establish good relationship with commanders and to establish themselves despite rank/credibility disparity with JA	2
Change the Uniform Code of Military Justice	1
Clarification of guidance and regulations regarding release of information, especially during high-visibility cases	1
Keep military community informed through internal information	1
Be forthcoming with information – lay out all the facts	1
Create PA/JA position(s) and fill with dual-trained person(s)	1
Take the initiative after trials are over to get Air Force side of the story out	1
Do case studies to find out the best ways to handle disciplinary cases	1
Control the message going out to the public	1
JA needs to realize that releasing information is not a case-by-case decision	1
Planning ahead of time	1
Use a 3 rd -party PR person when the Air Force’s hands are tied and they can’t release information	1

Nine percent of judge advocate respondents indicated that “other” ways to decrease conflict existed. These responses were classified into seven categories (See Table 4-14). Additionally, one respondent said that the questionnaire options for this question were “touchy-feely but not particularly helpful.”

Table 4-14

“Other” Ways to Decrease Conflict Between PA and JA	Number of JA Respondents Who Gave This Answer
Planning before a crisis occurs	1
Higher rank for PAO’s	1
Explain military laws and information release policies to the media/public	1
Better coordination between JA and PA	1
PA shouldn’t be the only ones to decide what is “in the best interests of the Air Force”	1
Better understanding of what the commander wants to do	1
Information should not be released if it will jeopardize legal proceedings	1

Approximately 25% of the commander respondents indicated that “other” ways to decrease conflict existed. These responses were classified into seven categories (See Table 4-15). When the “other” categories from all three groups were combined for this question, six themes were found to be the most frequently occurring (See Table 4-16).

Table 4-15

“Other” Ways to Decrease Conflict Between PA and JA	Number of Commander Respondents Who Gave This Answer
Commanders are the ones responsible for JA and PA decisions and for ensuring a good relationship between the two and they need to be educated on JA/PA issues	6
More meetings, communications, understanding between PA and JA	2
PA and/or JA need to share information more	1
Civilian appointees need military perspective	1
JA needs to stop withholding information	1
PA needs to stop speculating and admit wrongdoing if it’s true	1
Do case studies to find out the best way to handle legal cases	1

Table 4-16

“Other” Ways to Decrease Conflict Between PA and JA	Number of ALL Respondents Who Gave This Answer
Commanders are the ones responsible for JA and PA decisions and for ensuring a good relationship between the two and/or commanders need to be educated on JA/PA issues	9
More meetings, communication, coordination, respect/understanding between PA and JA	8
Interdisciplinary education and/or training between PA and JA	7
Do what is in the “best interest of the Air Force” not what is best for PA, JA or individuals	4

Table 4-16—continued

“Other” Ways to Decrease Conflict Between PA and JA	Number of ALL Respondents Who Gave This Answer
Need to get the AF side of the story out without damaging legal proceedings	4
Realize the importance of public opinion	3

Finally, respondents were asked if they had any other thoughts about how to improve the relationship between public affairs and legal functions. Half of the public affairs respondents gave input to this question. The answers then were coded into 19 categories (See Table 4-17).

Table 4-17

“Other” Thoughts on How to Improve the Relationship between PA and JA	Number of PA Respondents Who Gave This Answer
Planning, meetings, communication and understanding/respect are key	16
JA and PA need interdisciplinary education/training and/or need to exercise together	15
Both PA and JA need to be open minded and willing to compromise, work as a team toward consensus and what is best for the Air Force	11
The need to protect the legal system and people’s individual rights during a legal case hurts the Air Force in the court of public opinion. Need to be able to respond to media queries before/during a trial. The AF needs to review/clarify laws/regulations/policies/instructions/rules on releasing information, especially new media/legal environments. The Air Force should come up with some guidance on how to handle high-visibility legal cases.	11

Table 4-17—continued

“Other” Thoughts on How to Improve the Relationship between PA and JA	Number of PA Respondents Who Gave This Answer
The relationship between PA and JA is determined by the commander—need to educate him/her and other regarding JA and/or PA function(s)	10
JA thinks legal is the most important and/or JA needs to be willing to listen to PA advice when deciding legal stuff and need to be available to PA and provide them timely information	6
There is a disparity in rank/pay/credibility between PA and JA	5
Should do some case studies of how legal cases have been handled and/or study how civilian PR companies compare to PA in how the handle legal/disciplinary cases	5
Commanders need to respect PA as much as JA	
Include others besides JA in public affairs training—defense counsel, office of special investigations, etc. and include PA training at professional military education courses	2
HQ is too involved in base-level release of information	1
The threat of litigation will always cause conflict	1
PA and JA should be located in the same building together	1
JA is concrete and based on the law; PA is fuzzy and based on public opinion	1
Need 3 rd -party arbitrator because PA and JA are always opposed	1
Other organizations have conflict with PA also: operations, command, etc.	1
There are already steps being taken in JA community to become educated on PA issues	1
PA’s need to be willing to withhold information when appropriate	1
AF interpretation of The Privacy Act/other information regulations differ from other services	1

More than 45% of the judge advocate respondents gave input to this question.

The answers were classified into 20 categories (See Table 4-18). Additionally, one respondent said that the questionnaire was not good and another said that the survey “mischaracterized the attorney-client relationship.”

Table 4-18

“Other” Thoughts on How to Improve the Relationship between PA and JA	Number of JA Respondents Who Gave This Answer
JA and/or PA don’t understand the other’s functions—need to be educated or trained in the other functions so they can see the bigger picture	9
More meetings, communication and understanding/respect are needed between PA and JA	7
AF regulations on releasing information are too strict and we need to be able to get facts of a case out to the public before/during a trial, especially if the defendant has already gone public or if the case will draw media attention	5
Need to balance fair trial and privacy rights with the “right of the people to know”	4
The spokesperson in a situation should be whoever is the expert, not necessarily the PA, and this person should be properly trained and prepared	3
Need clarification of policies/regulations/instructions on releasing information	3
Hire PR experts or train PA to do PR so they can influence the media/public	3
Need to have plans to deal with legal cases	3
PA often is suspected of identifying with the media due to PA desire to “tell all”—and in doing so, they are doing more harm to the Air Force than good	3
Every situation is unique—no hard/fast rules to resolve or eliminate PA/JA conflict	2

Table 4-18—continued

“Other” Thoughts on How to Improve the Relationship between PA and JA	Number of JA Respondents Who Gave This Answer
JA needs to respond faster to requests for information	2
Need to consider PA implications of legal decision	2
Other issues besides criminal cases create conflict between JA and PA	1
PAO’s think they’re lawyers	1
Sometimes getting information out is more important than the court martial	1
Need faster HQ coordination	1
Need more quality people in JA and/or PA	1
Junior or mid-level enlisted people should not be spokespersons	1
Problems between PA and JA exist in the other services too	1
PA needs to do its own Freedom of Information work instead of having JA do it	1

More than half of the commander respondents gave input to this question. The answers were classified into 13 categories (See Table 4-19). One commander said that the survey questions were “leading” and another said that question options were not realistic. When the “other” categories from all three groups were combined for this question, six themes were found to be the most frequently occurring (See Table 4-20). Additionally, 21 respondents said that little or no conflict exists between public affairs and legal functions.

Table 4-19

“Other” Thoughts on How to Improve the Relationship between PA and JA	Number of Commander Respondents Who Gave This Answer
There should be more involvement in the relationship between JA and PA	7
There is a lack of information sharing/communication between PA and JA. They should meet more to plan ahead, talk more—especially about specific cases, and understand each other’s perspective and responsibilities	5
Need PA and JA to work as a team in determining what is in the best interest of the Air Force	4
JA and PA need to have interdisciplinary education/training to learn about each other	4
JA thinks only of legal issues—they need to have an understanding of the bigger picture	2
The relationship between JA and PA is situational—depends on each issue/legal case	2
There needs to be a balance between legal concerns and the “right of public to know.” The Air Force must be able to balance media coverage before/during a trial	2
PA needs to quit speculating and/or needs to listen to JA more	2
PA and JA inherently have different goals/objectives	2
JA is more experienced and has a well-defined job that is accountable to the law, hence a conservative approach. PA does not have a well-defined job and is accountable to public opinion which is static	1
The military justice system is fair and not usually subject to political pressures	1
PA should be involved in any legal case which could draw media attention	1
JA needs to let information be released	1

Table 4-20

“Other” Thoughts on How to Improve the Relationship between PA and JA	Number of ALL Respondents Who Gave This Answer
Planning, meetings, communication and understanding/respect are key to a good relationship and/or there is a lack of information sharing going on and/or	31
JA and PA need interdisciplinary education/training and/or need to exercise together	28
The need to protect the legal system and people’s individual rights during a legal case hurts the AF in the court of public opinion. Need to be able to respond to media queries before/during a trial. The Air Force needs to review/clarify laws/regulations/policies/instructions/ rules on releasing information, especially new media/legal environments. The Air Force should come up with some guidance on how to handle high-visibility legal cases. Need to balance the “right to know” with the right to fair legal proceedings and individual’s rights	25
The relationship between PA and JA is determined by the commander – need to educate him/her and other regarding JA and/or PA function(s). There needs to be more commander involvement in the relationship.	17
Both PA and JA need to be open minded and willing to compromise, work as a team toward consensus and what is best for the AF	15
JA thinks legal is the most important and/or JA needs to be willing to listen to PA advice when deciding legal stuff and need to be available to PA and provide them timely information	13

Post Hoc Analysis

The researcher examined the relationships between the amount of conflict and rank, years of public affairs, legal or command experience, job knowledge and whether or not an office had public affairs plans for dealing with legal issues. Only three

relationships appeared to be statistically significant. However, given these small sample sizes and relatively low response rates, the data cannot be rigorously inferred to the populations.

The first statistically significant relationship found was between the familiarity of public affairs officers with criminal investigations and the frequency of conflict between public affairs and legal functions (chi-square = 15.9, $p = .043$) – the more familiar public affairs officers were with this topic, the more frequent the conflict. Two other significant relationships uncovered were between the familiarity of judge advocates with censorship and media relations and the frequency of conflict (censorship chi-square = 16.2, $p = .038$; media relations chi square = 16.6, $p = .035$) – the more familiar judge advocates were with these topics, the more frequent the conflict.

CHAPTER 5 SUMMARY AND CONCLUSIONS

Discussion

The findings support previous literature which indicates that, although public relations practitioners and lawyers do work well together, conflict between the two does exist which can have a negative impact on an organization as a whole. Some of this conflict, as theorists have stated for years, is inherent in any relationship and can have both productive and negative consequences.

Overall, the researcher was satisfied with the response rates from both the public affairs officers and commanders—38% each. This shows these two groups perhaps identified with the research topic and had opinions and concerns they wanted to share. In particular, the researcher was surprised that so many commanders participated in the survey because he suspected that this group, due to the tremendous time constraints on chief executive officers, would have the lowest response rate. Quite the contrary occurred. Not only did a large number of commanders respond, but many indicated that the relationship between public affairs and legal functions was the responsibility of the commander and that he/she needed to be educated on PA/JA issues and actively involved in the relationship.

However, the researcher was disappointed in the low response rate (21%) from the legal community. This could have occurred for several reasons. First, the judge

advocates may not have identified as much with the research topic. Second, these data and the literature suggest that lawyers often have the upper hand when dealing with public affairs issues, due to a credibility or power gap between the two functions. Although the researcher received valuable information from many lawyers, some attorneys may not have been willing to discuss an issue which might result in their losing the control they already have over the relationship. Third, because the survey was not endorsed by the senior Air Force judge advocate, there may have been less incentive among Air Force attorneys to participate.

Frequency and Characteristics of Conflict

Both lawyer and public affairs groups were very similar in the amount of conflict perceived, which corresponds almost exactly to the data Fitzpatrick gathered in a survey of public relations practitioners. In her study, more than 40% of respondents said the relationship was "excellent," and in this study approximately 40% of respondents said that conflict "rarely" or "never" existed. Similarly, in the Fitzpatrick study approximately 15% of respondents said the relationship was "fair" or "poor," and in this study 16% of public affairs officers and 12% of lawyers said that conflict "usually" or "always" existed. Interestingly, commanders saw the least amount of conflict in the relationship. This could be because many conflicts may be resolved between public affairs and legal functions without commander involvement. However during crises, which necessarily involve more commander involvement, the majority of all three samples indicated that conflict increases.

And just as many of Fitzpatrick's respondents indicated they had a lack of knowledge regarding some legal topics, there appears to be a knowledge gap with Air

Force public affairs officers also. Although they indicated that they are well-versed in Privacy Act and Freedom of Information Act issues, 75% said they were “not at all” or only “somewhat” familiar with the military justice system and 87% said the same about their familiarity with criminal investigations, two areas that increasingly have public affairs implications. The same was true for the judge advocate respondents. Although they appeared to have a good working knowledge of Privacy Act and Freedom of Information Act issues, 78% said they were “not at all” or only “somewhat” familiar with media relations and 83% said the same about the DoD Principles of Information which provide the foundation for the military’s information release policies. But although knowledge of the other’s function is important to both communicators and lawyers, these data indicate that an increase in knowledge will not translate necessarily to a decrease in conflict. In fact, this analysis shows that, depending on the topic, more knowledge could increase the amount of conflict. The researcher is unsure why this occurred. It could be that, as one becomes more familiar with a given topic and more confident in one’s own knowledge, he or she is less willing to compromise.

The combined data from all three samples reflected similar characteristics of conflict between public affairs and legal functions. There was a recognition that some conflict is inevitable due to competing objectives, goals, etc. However, the release of information seemed to be a major source of conflict. More than 60% said that the balance between the “right of the public to know” and privacy rights or the right to fair legal proceedings contributed to conflict and nearly as many said that the current media environment did also. These two characteristics go hand in hand and feed off each other as many recent high-visibility court cases have shown. Making the situation worse may

be a lack of education, training or information sharing between the two fields. Many respondents admitted they did not know as much about the other function as they should. And although the public affairs respondents were the ones who more frequently acknowledged a disparity in rank, credibility, pay and treatment between themselves and lawyers, some Air Force attorneys and commanders mentioned these discrepancies as well.

How is Conflict Usually Resolved?

The public affairs respondents saw more consensus (win-win) results from conflicts with the legal community than did the lawyers, although both agreed that approximately 43% of the time there is a win-lose or a lose-lose resolution to a conflict, where either the public affairs or the legal counsel is taken or a compromise is made where both sides are unsatisfied with the decision. Combining the data from all three samples, one sees that about half of the time conflict is resolved through a win-win solution. The fact that the two experience lose-lose or win-lose results nearly 40% of the time shows that there is room for improvement in how conflicts are resolved. But what is even more significant is that the respondents felt that legal counsel is heeded more than the public affairs counsel by a factor of 25 to 1.

That being said, the researcher believes it is not important whether public affairs or legal wins or loses in any given situation, unless the result is a loss for the Air Force. But, these data indicate that the Air Force may only experience a win-win result—win public support and achieve its legal goals—30% of the time following a conflict between public affairs and legal functions. Thirty-six percent of the time the Air Force achieves its legal goals but does not win public support (win-lose), less than one percent of the

time the service wins public support but does not achieve its legal goals (win-lose), and nine percent of the time loses public support and does not achieve its legal goals (lose-lose). When one looks at the previous data on how conflicts between the two functions are resolved, there is a similar disparity in the percentage of times the legal counsel is taken over the public affairs counsel or when a compromise is made between the two where both are still unsatisfied with the decision. So it appears that it *does* matter that public affairs is losing while legal is winning because the Air Force as a whole is losing at times when it could be winning.

More than 20% of all the respondents indicated that the question regarding the usual results for the Air Force after a conflict between public affairs and legal functions has been resolved was “not applicable.” This could be for several reasons. Those who felt there was rarely or never any conflict between the two may not have felt the question applied to their situation. And, some may have not agreed with the “win-lose” terminology used by the researcher, as a few wrote in their survey responses.

Recommendations

The findings do indicate there is a need for improvement in the relationship between Air Force legal and public affairs functions. There is no way to remove all conflict, nor is there a desire to since some conflict is healthy in any relationship. As Gen. William Moorman, a senior Air Force lawyer wrote in his survey response:

There is in our Constitution an inherent tension between competing rights: my freedom to say whatever comes to mind, and your freedom not to be panicked when I yell ‘fire’ in a crowded theater when there is no fire, the public’s right to know what goes on within its government and the government’s right to have its internal decision-making process operate free from outside interference, one person’s right to put anything they want on the Internet and another’s right not to have their children exposed to graphic sexual material. This inherent tension is

not something to be resolved by hard and fast rules, regulations or survey results. The tension between competing interest is what makes our democracy work. We should expect it, value it, and applaud it. Public Affairs Officers, Judge Advocates and Commanders need to work together within that framework to make the best possible decisions for the Air Force, but there will never be 'one size fits all.'

Using such a foundation and the data from the respondents themselves, the researcher makes recommendations, not to completely eliminate conflict, but to limit destructive conflicts, better resolve constructive conflicts and improve the quality of counsel given to Air Force leaders. Some or many of these recommendations are nothing new to Air Force communicators and lawyers since the relationship between legal and public affairs functions is receiving more attention recently as a result of recent Air Force crises. As mentioned in the literature review, inroads already are being made to begin more communication, more planning, and more cross-training.

First, the data clearly show that the balance between public affairs and legal functions is disproportionately weighed in favor of legal concerns, sometimes resulting in destructive consequences to the Air Force. If the Air Force wants to change this and succeed more in the court of public opinion, commanders must realize the far-reaching effects public approval have on an organization, give greater weight to public affairs counsel and balance legal and public affairs concerns accordingly.

Second, there is a need for continued interdisciplinary education and training among public affairs and legal personnel as well as education for other officers, especially commanders. As these data show, more knowledge of legal/public affairs issues will not necessarily decrease the amount of conflict between the two functions, but it could affect how those conflicts are resolved. The Defense Information School and

the Judge Advocate General School should include curriculum units on the relationship and balance between public affairs and legal counsel. The Defense Information School should broaden its existing units regarding criminal investigations and the military justice system, and the Judge Advocate General School should broaden its curriculum units regarding media relations and the DoD Principles of Information. Although the professional military education schools for officers all include curriculum regarding public affairs—from readings and discussions to media training, mock press conferences and war-gaming media exercises—the feedback from officers at these schools indicate they want more opportunities to learn about public affairs.¹ The Air Force should give them what they are asking for and these opportunities also should include discussions on how to most effectively balance public affairs and legal counsel. Finally, public affairs offices worldwide which are not already doing so should expand their media training to include judge advocates, investigating officials and any others who might be involved in legal/public affairs issues.

Many respondents, especially the commanders and public affairs officers who often cited recent Air Force legal cases that made national headlines, want the Air Force's interpretation of privacy laws re-evaluated in an effort to be similar to the other military services and to be able to respond with the Air Force side of the story before and during courts martial, investigations and other crises to better balance the "right of the people to know," an individual's right to privacy and fair legal proceedings, and the right of the government to administer the military justice system. This should be done by a

¹ Ivy, Jack, Air University Director of Public Affairs, personal telephone conversation, 21 Jan. 1998.

joint legal/public affairs team, and the results clarified in detailed instructions to the field. With only 30% of public affairs offices having actual plans on how to deal with legal issues, this guidance from headquarters also should include “boilerplate” plans on how to deal with high-visibility legal cases.

There is also a call for improved and more frequent communication between judge advocates and public affairs officers, not only in informal everyday meetings to share information, discuss current events and plan for upcoming legal/public affairs crises, but also at formal meetings, conferences and/or off-sites that will help participants better understand the perspective, objectives and tactics of each other’s function.

The commander participation in this relationship is critical, and public affairs officers and judge advocates must ensure the commander is educated on court of law and court of public opinion factors, so that he/she can make the decision about what is best for the Air Force. Both counselors also have a charge to put aside their own parochial interests before offering their counsel and determine what the best legal/public affairs recommendation is for each individual case.

Some respondents, mostly public affairs officers but also some lawyers and commanders, mentioned the rank/experience/credibility disparity between public affairs and legal functions as a factor of conflict. The researcher recommends that the Secretary of the Air Force’s public affairs staff research whether the Air Force can do anything to level the playing field between the two functions. For instance, at the major command and air staff level, where many public affairs officers have the same qualifications in regards to advanced professional education and experience as senior judge advocates, it may be beneficial to have more equity in rank and position. It could be that upgrading

the Director and Deputy Director of Public Affairs to two-star and one-star general rank and creating general officer positions at some of the larger major commands would allow for more balance between legal and public affairs counsel and send the proper message to the rest of the service that the two functions are indeed equal.

Research Contributions for Mass Communications

The data from this survey support earlier research done by Fitzpatrick. It shows that, like their civilian counterparts, Air Force public affairs officers lack some knowledge of legal issues. This should send an even stronger signal to communicators that continuing professional education regarding legal topics is needed. The study also shows that, in many conflicts between communicators and lawyers, legal counsel is heeded more by leaders than public relations counsel, often to the detriment of the organization. Using such data that show the importance of balancing legal and public relations objectives in order to win in both a court of law and the court of public opinion, public relations practitioners should continue their efforts to educate lawyers and leaders.

This research also shows the value of gathering information about public relations and the law not only from public relations practitioners, but also from lawyers and leaders as well. As full participants in the relationship, all should offer their opinions of what is good and bad about their interaction, and data from all three are more valuable than data from just one. The researcher agrees with many that improving the status of public relations is important, but not at the expense of the organization as a whole. Whether public relations or the law "wins" in any given situation is not important. What

is important is what should be done in that situation to best position the organization to win in both a court of law and the court of public opinion.

There is already evidence that this survey encouraged public affairs officers and lawyers to think about the relationship between public relations and the law. One public affairs officer wrote, "This survey has encouraged me to think about making an appointment for the public affairs office to tour our court, sit in on a hearing and learn more about the UCMJ." And a judge advocate wrote, "You had a great deal to do with my changing attitudes regards this issue." If both can continue a dialogue, improvements in the relationship are likely.

Research Limitations and Opportunities for Future Research

There are several limitations to this research. First, many of the findings reflect what happens when Air Force public affairs officers and lawyers are in conflict and how those conflicts are resolved. More than 40% of survey respondents indicated that conflict between the two "never" or "rarely" occurs, and many respondents sent comments indicating that the relationship between the two is favorable. So, it is unknown what the overall effects are on the Air Force when the two are *not* in conflict. Second, although the researcher does feel that how conflict is resolved among public affairs officers and judge advocates is a contributor to how the Air Force fares in courts of law and the court of public opinion, a cause and effect relationship has not been established. Clearly there are other factors that determine the success of the Air Force as an organization. Third, the researcher acknowledges that the "win-lose" framework used to evaluate the relationship between public affairs and legal functions is simplistic and may have been

why more than 20% of respondents felt the survey questions regarding conflict resolution were “not applicable.” Still, although certainly the relationship between public relations and the law is not always “black and white,” the use of the “win-lose” terminology has been used for decades by conflict theorists and is an accepted form of analysis. Fourth, although the response rate of 31% is acceptable for an online survey, the data cannot necessarily be generalized to all Air Force public affairs officers, judge advocates and commanders. Finally, the findings only reflect the relationship between public affairs and legal functions in the U.S. Air Force, not any similar relationship in other military service, government department or the civilian sector.

Still, this research could be the foundation for further studies of the relationship between public relations and the law. A similar survey could be given to a cross-section of all types of public relations practitioners, lawyers and organizational leaders—corporate, non-profit, government, etc. The findings from such a survey then could be applied across the board. And, since this study sets a benchmark to describe the relationship between public affairs and lawyers in the Air Force, this survey could be replicated in five or ten years to see if there has been any improvement. If this is done, the researcher recommends surveying the same percentage of judge advocates as public affairs officers and commanders.

Conclusion

While clearly there are other factors besides public affairs and legal that impact whether the Air Force wins or loses in a court of law or the court of public opinion, there is an indication that the service would do well to better balance public affairs and legal

counsel. This is not to say that the Air Force will always be able to win in both a court of law and the court of public opinion. There will be situations when the need for public approval is more important than an individual court case. And, there will be times when public opinion should be sacrificed on the altar of justice. But continued education and communication between public affairs officers, judge advocates and commanders will make for a better relationship, and in turn create a more successful organization.

APPENDIX A
SAMPLE ELECTRONIC MAIL TO SURVEY RECIPIENTS

Dear

I am an Air Force Institute of Technology student at the University of Florida doing research for my masters thesis, under the supervision of Dr. Linda Hon, on the relationship between Air Force public affairs and legal functions. In order to gather data on the subject, I need your input to find out what kind of conflict exists, how frequently it occurs, how it is usually resolved, and most importantly, what the results are for the Air Force. I am also gathering data on ways to improve the relationship.

The Air Force Personnel Center, Survey Branch, has authorized this online survey to commanders, public affairs officers and judge advocates under survey control number USAF SCN 97-77 which expires on 31 Dec 97. Your survey is located at <http://grove.ufl.edu/~lawj/filename.html>

If you elect to complete the survey, which is entirely voluntary, please do so no later than 5 Dec 97. Please be candid in your response. Your identity will be confidential to the extent provided by law, and you do not have to answer any questions you do not want to answer. No compensation will be given to you for completing the survey. The estimated time to complete the survey is 10 minutes. If you have any questions about the survey or my research, please contact me by email or by phone at (352) 337-1776. Survey results will be available by Summer 1998, and I can send them to you electronically if you would like to receive them.

In today's crisis-laden environment, the relationship between public affairs and legal functions has never been more important to ensuring the success of the Air Force in courts of law and the court of public opinion. With your help, this research will shed some light on this relationship and suggest some ways for all of us to better serve our Air Force.

Sincerely,

JAMES W. LAW, Capt, USAF
AFIT Student, University of Florida

APPENDIX B
SAMPLE REMINDER ELECTRONIC MAIL TO SURVEY RECIPIENTS

Dear

If you have already filled out a PA/JA Relationship Survey, thank you and please disregard this message. If not, this is a reminder that, if you do decide to participate, I need your survey response by Friday, Dec. 5. Your survey is located on the Internet at <http://grove.ufl.edu/~lawj/jasurvey.html>

My original email message regarding the survey and my research follows.

Capt James Law
AFIT Student, University of Florida

APPENDIX C
SURVEY QUESTIONNAIRES

Public Affairs Officer Survey

PA/JA Relationship Survey
USAF Survey Control Number 97-77 (Expires 31 Dec 97)

Thank you for participating in my survey! Survey results and analysis will be available by Summer 1998. If you would like to receive the results electronically at that time, please indicate so at the end of the survey. If you have any questions or comments about the survey or my research concerning the relationship between Air Force public affairs and legal functions, please email me.

Survey Instructions: Unless otherwise directed, please pick the one best response to each question.

Part 1: Demographics and Job Knowledge

1. Rank

1st or 2nd Lieutenant
Captain
Major
Lieutenant Colonel
Colonel or Above

2. Years of public affairs experience

3. How familiar are you with:

a. The Freedom of Information Act

Not At All Familiar
Somewhat Familiar
Very Familiar

b. The Privacy Act

Not At All Familiar
Somewhat Familiar
Very Familiar

c. Censorship

Not At All Familiar
Somewhat Familiar
Very Familiar

d. Criminal Investigations

Not At All Familiar
Somewhat Familiar
Very Familiar

e. The Military Justice System

Not At All Familiar
Somewhat Familiar
Very Familiar

f. Civil Litigation

Not At All Familiar
Somewhat Familiar
Very Familiar

4. Does your office have any crisis plans that specifically deal with legal issues such as high-visibility courts martial, investigations, etc.?

Yes
No

Part 2: Frequency and Characteristics of Conflict (Note: For purposes of this survey, conflict exists "whenever incompatible activities occur.")

5. How often is there conflict between public affairs and legal functions?

Never
Rarely
Sometimes
Usually
Always
N/A

6. Do you think more conflict exists during a crisis?

Yes
No
About the same amount of conflict exists during a crisis
N/A

7. In your opinion, what are the major characteristics of conflict between public affairs and legal functions?

(Check as many as apply)

A disparity of rank between public affairs officers and judge advocates
PA and JA have different missions, objectives and/or priorities
A media environment which encourages immediate dissemination of information
Lack of information sharing by one or both sides
Balancing "the public's right to know" and privacy rights
Lack of education/training (i.e. PAO's don't understand the UCMJ and/or JA's don't understand public affairs)
N/A
Other _____

Part 3: Conflict Resolution and Results

8. How is conflict between public affairs and legal functions usually resolved?

The JA course of action is taken
The PA course of action is taken
Through a compromise where both sides are unsatisfied with the decision
Through joint consensus where both sides are satisfied with the decision
N/A

9. After a conflict has been resolved, what is the usual result for the Air Force as a whole?

- Wins public support, fails to achieve legal goals
- Achieves legal goals, loses public support
- Wins public support, achieves legal goals
- Loses public support, fails to achieve legal goals
- N/A

Part 4: Suggestions for Improvement

10. In your opinion, what could be done to decrease the amount of conflict or how it is resolved? (Check as many as apply)

- Interdisciplinary Education/Training (PAO's get trained on the military justice system and JA's get media training)
- More information sharing between the two functions
- Clarification of policies regarding the release of information and privacy rights
- More joint planning between the two before crises occur
- Meetings among the two (at any level) to help adjust perceptions, feelings and/or attitudes about the two functions
- More commitment to mutually determining problems, generating/evaluating potential solutions, and agreeing on final decisions
- More emphasis on determining what is in the best interests of the Air Force as a whole
- N/A
- Other _____

11. Do you have any other thoughts on how to improve the relationship between Air Force public affairs and legal functions?

If you would like to electronically receive the survey results/analysis next summer, please input your email address _____

Judge Advocate Survey

PA/JA Relationship Survey
USAF Survey Control Number 97-77 (Expires 31 Dec 97)

Thank you for participating in my survey! Survey results and analysis will be available by Summer 1998. If you would like to receive the results electronically at that time, please indicate so at the end of the survey. If you have any questions or comments about the survey or my research concerning the relationship between Air Force public affairs and legal functions, please email me.

Survey Instructions: Unless otherwise directed, please pick the one best response to each question.

Part 1: Demographics and Job Knowledge

1. Rank

1st Lieutenant
Captain
Major
Lieutenant Colonel
Colonel or Above

2. Years of legal experience

3. How familiar are you with:

a. The Freedom of Information Act

Not At All Familiar
Somewhat Familiar
Very Familiar

b. The Privacy Act

Not At All Familiar
Somewhat Familiar
Very Familiar

c. Censorship

Not At All Familiar
 Somewhat Familiar
 Very Familiar

d. The DoD Principles of Information

Not At All Familiar
 Somewhat Familiar
 Very Familiar

e. Media Relations

Not At All Familiar
 Somewhat Familiar
 Very Familiar

Part 2: Frequency and Characteristics of Conflict (Note: For purposes of this survey, conflict exists "whenever incompatible activities occur.")

4. How often is there conflict between public affairs and legal functions?

Never
 Rarely
 Sometimes
 Usually
 Always
 N/A

5. Do you think more conflict exists during a crisis?

Yes
 No
 About the same amount of conflict exists during a crisis
 N/A

6. In your opinion, what are the major characteristics of conflict between public affairs and legal functions?

(Check as many as apply)

A disparity of rank between public affairs officers and judge advocates

PA and JA have different missions, objectives and/or priorities

A media environment which encourages immediate dissemination of information

Lack of information sharing by one or both sides

Balancing "the public's right to know" and privacy rights

Lack of education/training (i.e. PAO's don't understand the UCMJ and/or JA's don't understand public affairs)

N/A

Other _____

Part 3: Conflict Resolution and Results

7. How is conflict between public affairs and legal functions usually resolved?

The JA course of action is taken

The PA course of action is taken

Through a compromise where both sides are unsatisfied with the decision

Through joint consensus where both sides are satisfied with the decision

N/A

8. After a conflict has been resolved, what is the usual result for the Air Force as a whole?

Wins public support, fails to achieve legal goals

Achieves legal goals, loses public support

Wins public support, achieves legal goals

Loses public support, fails to achieve legal goals

N/A

Part 4: Suggestions for Improvement

9. In your opinion, what could be done to decrease the amount of conflict or how it is resolved? (Check as many as apply)

Interdisciplinary Education/Training (PAO's get trained on the military justice system and JA's get media training)

More information sharing between the two functions

Clarification of policies regarding the release of information and privacy rights

More joint planning between the two before crises occur

Meetings among the two (at any level) to help adjust perceptions, feelings and/or attitudes about the two functions

More commitment to mutually determining problems, generating/evaluating potential solutions, and agreeing on final decisions

More emphasis on determining what is in the best interests of the Air Force as a whole

N/A

Other _____

10. Do you have any other thoughts on how to improve the relationship between Air Force public affairs and legal functions?

If you would like to electronically receive the survey results/analysis next summer, please input your email address _____

Commander Survey

PA/JA Relationship Survey
USAF Survey Control Number 97-77 (Expires 31 Dec 97)

Thank you for participating in my survey! Survey results and analysis will be available by Summer 1998. If you would like to receive the results electronically at that time, please indicate so at the end of the survey. If you have any questions or comments about the survey or my research concerning the relationship between Air Force public affairs and legal functions, please email me.

Survey Instructions: Unless otherwise directed, please pick the one best response to each question.

Part 1: Demographics

1. Current Level of Command?

Wing or Equivalent
Numbered AF or Equivalent
Major Command
FOA or DRU
USAF Headquarters

2. Years of command experience

Part 2: Frequency and Characteristics of Conflict (Note: For purposes of this survey, conflict occurs "whenever incompatible activities occur.")

3. How often is there conflict between public affairs and legal functions?

Never
Rarely
Sometimes
Usually
Always
N/A

4. Do you think more conflict exists during a crisis?

Yes

No

About the same amount of conflict exists during a crisis

N/A

5. In your opinion, what are the major characteristics of conflict between public affairs and legal functions? (Check as many as apply)

A disparity of rank between public affairs officers and judge advocates

PA and JA have different missions, objectives and/or priorities

A media environment which encourages immediate dissemination of information

Lack of information sharing by one or both sides

Balancing "the public's right to know" and privacy rights

Lack of education/training (i.e. PAO's don't understand the UCMJ and/or JA's don't understand public affairs)

N/A

Other _____

Part 3: Conflict Resolution and Results

6. How is conflict between public affairs and legal functions usually resolved?

The JA course of action is taken

The PA course of action is taken

Through a compromise where both sides are unsatisfied with the decision

Through joint consensus where both sides are satisfied with the decision

N/A

7. After a conflict has been resolved, what is the usual result for the Air Force as a whole?

Wins public support, fails to achieve legal goals

Achieves legal goals, loses public support

Wins public support, achieves legal goals

Loses public support, fails to achieve legal goals

N/A

Part 4: Suggestions for Improvement

8. In your opinion, what could be done to decrease the amount of conflict or how it is resolved? (Check as many as apply)

Interdisciplinary Education/Training (PAO's get trained on the military justice system and JA's get media training)

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More commitment to mutually determining problems, generating/evaluating potential solutions, and agreeing on final decisions

More emphasis on determining what is in the best interests of the Air Force as a whole

N/A

Other _____

9. Do you have any other thoughts on how to improve the relationship between Air Force public affairs and legal functions?

If you would like to electronically receive the survey results/analysis next summer, please input your email address _____

APPENDIX D
SAMPLE SURVEY RESPONSE

Subject: FORM results

Date:

From: lawj@nervm.nerdc.ufl.edu (WebMonitor mail)

To: lawj@nervm.nerdc.ufl.edu

(PRank) 2

(PExperience) 2

(PFOIA) 2

(PPrivacy) 2

(PCensor) 2

(PCrime) 3

(PCourt) 2

(PCivil) 1

(Pplans) 1

(PFreq) 3

(PCrisis) 1

(PConflict) 1, 2, 3, 4, open ended data here, open ended data here

(PResolve) 1

(PResult) 2

(PDecrease) 1, 2, 3, 4, 5, open ended data here, open ended data here

(PImprove)

open ended data here

(Pmail) lawj@nervm.nerdc.ufl.edu

(next-url) <http://grove.ufl.edu/~lawj/thanks.html>

(x) 125

(y) 45

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BIOGRAPHICAL SKETCH

James W. Law is a captain in the U.S. Air Force, currently finishing an assignment to the University of Florida to earn a master of arts degree in mass communication. He is 30 years old.

James was born in 1968 at George Air Force Base, California, near Victorville. He graduated in the top 10 percent of his class at Fort Collins High School, Fort Collins, Colorado, in 1986. He received a bachelor of science degree in political science and his commission in 1990 from the U.S. Air Force Academy in Colorado Springs, Colorado. He next attended the Defense Information School's Public Affairs Officer Course at Fort Benjamin Harrison, Indiana, where he graduated with honors.

James' first assignment was Deputy Director of Public Affairs for the Air Force Flight Test Center at Edwards Air Force Base, California, where he was involved in public affairs activities for the B-2, the C-17 and the YF-22 aircraft. In 1992, he was reassigned as Chief of Public Affairs for the 7276th Air Base Group at Iraklion Air Station, Crete, Greece, where he directed initial public affairs actions for the drawdown and closure of the base. James was reassigned in 1993 to Ramstein Air Base, Germany, as Deputy Chief of Public Affairs for the 86th Airlift Wing and Kaiserslautern Military Community – the largest community of Americans outside the United States. During this assignment he deployed to Normandy, France, for 50th anniversary of WWII

commemoration activities and to Albania, Italy, Bosnia and Croatia to assist with peace efforts in the former Yugoslavia.

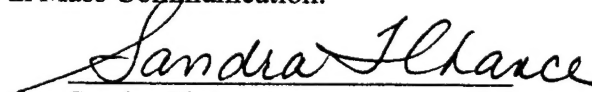
His military decorations include the Air Force Commendation Medal with two oak leaf clusters, the Air Force Achievement Medal with four oak leaf clusters, the Armed Forces Service Medal, the Joint Meritorious Unit Award, the National Defense Service Medal and the NATO Medal. He is a life member of both the Air Force Association and the U.S. Air Force Academy Association of Graduates.

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Arts in Mass Communication.



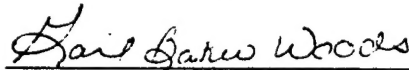
Linda Hon, Chair
Assistant Professor of Journalism and
Communications

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Arts in Mass Communication.



Sandra Chance
Assistant Professor of Journalism and
Communications

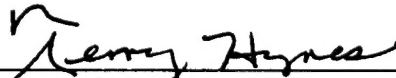
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Gail Baker Woods
Associate Professor of Journalism and
Communications

This thesis was submitted to the Graduate Faculty of the College of Journalism and Communications and to the Graduate School and was accepted as partial fulfillment of the requirements for the degree of Master of Arts in Mass Communication.

May, 1998



Dean, College of Journalism and
Communications

Dean, Graduate School